Lim Guan Eng v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO M-05-34 AND 35 OF 1997
GOPAL SRI RAM, SITI NORMA YAAKOB AND DENIS ONG JJCA
1 APRIL 1998

Criminal Law *— Sedition — Publication that brings administration of justice into hatred — Serious consequences — Punishment of imprisonment priority over fine — Whether appellate court can substitute fine with imprisonment — Sedition Act 1948 s 4(1)(b)*

Criminal Procedure *— Malicious publication of false news — Seditious word used — Whether there was actual malice — Test applied — Whether judge had misdirected himself in convicting the accused — Printing Presses and Publications Act 1984 s 8A(1)*

Criminal Procedure *— Sentence — Inadequacy of sentence — Appellant fined on both charges — No reason given for imposing such a sentence — Judge did not consider serious nature of the offence — Whether judge had erred in principle — Whether sentence imposed adequate*

Tan Sri Rahim Tamby Chik ('Rahim'), the former Chief Minister of the state of Melaka, was charged with having sexual relations with a girl below the age of 16 ('the minor'). However, there was inadequate evidence to proceed with the case against him and the charges were withdrawn. The evidence showed that at one point in time the minor was detained by the police. However, according to her own evidence, she was not placed in a lock-up. She was then placed in protective custody pursuant to an order made by a magistrate's court.

The appellant is the Member of Parliament for Kota Melaka as well as the Deputy Secretary-General of the Democratic Action Party. He published 5,000 copies of a pamphlet which contained the words 'Victim imprisoned, criminal free'. The appellant was charged with the first charge that the words 'Mangsa dipenjarakan' ('Victim imprisoned') amounted to false news that had been maliciously published, contrary to s 8A(1) of the Printing Presses and Publications Act 1984 ('the PPPA') ('the first charge'). The appellant was alleged to have made a speech in which he said that he was dissatisfied with the laws of Malaysia because of the double standard which resulted in the rape case involving Rahim not being brought to court and with the fact that the court had ordered the minor to be detained for three years whereas Rahim, who should have been imprisoned for violating the law, was instead set free. These two comments resulted in the second charge against the appellant, that he had committed sedition contrary to s 4(1)(b) of the Sedition Act 1948 ('the second charge').

The trial judge found the appellant guilty on the first charge and sentenced him to a fine of RM10,000, in default six months' imprisonment. The judge also convicted the appellant on the second charge and imposed a fine of RM5,000, in default three months' imprisonment. The appellant appealed against both convictions and

A sentences passed upon him. At the same time, there were two cross-appeals by the Public Prosecutor who complained that the sentence passed upon the appellant in respect of each proved offence was inadequate.

B **Held**, dismissing the appellant's appeals but allowing the respondent's cross-appeals:

(1) There was no merit in the submissions advanced on the appellant's behalf in support of his appeal against the decision of the trial judge on the first charge as the trial judge had approached the words complained of in their proper context. The test that is to C be applied under s 8A(1) of the PPPA is that of the ordinary man on the street that accepts the words in the sense in which they are ordinarily used. It followed that the words 'Mangsa dipenjarakan' conveyed the meaning that the minor had been imprisoned despite her innocence, although prosecution evidence showed that the D minor had never been imprisoned and that even during her detention by the police, she was not kept in a lock-up. Further, the evidence supported the inference that the appellant was actuated by actual malice in publishing those words. There was, therefore, no misdirection by the judge of himself upon the law or the evidence and the first appeal, which related to the conviction E upon the first charge, were without merit (see pp 42B–I and 43A–B).

(2) A party is bound by the evidence of witnesses whom he calls in proof of his case. The trial judge had taken into account all relevant considerations when deciding to reject the answers given F under cross-examination. As such, there was no error in the trial judge's approach to the evidence led in proof of the second charge and there was judicial appreciation of such evidence. Further, in a case where it is alleged that a speech was made containing two or more passages that are seditious, it is fairly open to a trial court to order an acquittal in respect of one G passage and yet enter a conviction in respect of the other. In the present case, the trial judge carefully scrutinized the evidence before deciding to act upon it. There was no error in the reasoning of the judge when he came to evaluate the credibility of the prosecution witnesses (see pp 47A–B, 48G–H and 49E–F).

H (3) The sentence imposed by the judge on the appellant was manifestly inadequate as he did not take into account the serious nature of the offence nor address his mind to the public interest, nor did he give any reasons for imposing such a sentence. Reasons must be given for imposing a particular sentence to enable an I appellate court to ensure that there has been no error in principle. The judge had therefore erred in principle. Taking into account all the circumstances of the case, including the seriousness of the offence and the requirement of deterrence, and after striking a balance between the interests of the public and the interests of

the appellant, a term of 18 months' imprisonment would be the appropriate sentence to be passed upon the appellant on the first charge (see p 53E–H).

(4) On the evidence adduced, it was clear that the words uttered by the appellant at the meeting were seditious, and the appellant had not sought to argue otherwise. Speeches or publications that bring the administration of justice into hatred or contempt produce a serious consequence. Although s 4 of the Sedition Act 1948 provides for a fine in priority to a term of imprisonment as punishment, a court may still send a person to prison for sedition. Having regard to the facts of this case, the sentence imposed by the judge must be set aside in favour of a term of imprisonment of 18 months on the second charge (see pp 54D–E and 55E–F).

[Bahasa Malaysia summary

Tan Sri Rahim Tamby Chik ('Rahim'), bekas Ketua Menteri negeri Melaka, telah dituduh mempunyai hubungan seks dengan seorang perempuan di bawah umur 16 tahun ('orang yang di bawah umur tersebut'). Walau bagaimanapun, tidak terdapat keterangan yang mencukupi untuk meneruskan kes terhadap beliau dan pertuduhan tersebut telah ditarik balik. Keterangan menunjukkan bahawa orang yang di bawah umur tersebut pernah ditahan oleh polis pada suatu ketika. Walau bagaimanapun, menurut keterangannya sendiri, ia telah tidak dimasukkan ke dalam lokap. Ia telah kemudiannya diletakkan dalam jagaan perlindungan selaras dengan satu perintah yang dibuat oleh sebuah mahkamah majistret.

Perayu adalah Ahli Parlimen bagi Kota Melaka dan juga Timbalan Ketua Setiausaha Parti Tindakan Demokratik. Beliau telah menerbitkan 5,000 salinan risalah yang mengandungi perkataan-perkataan 'Victim imprisoned, criminal free'. Perayu telah dituduh atas tuduhan pertama bahawa perkataan-perkataan 'Mangsa dipenjarakan' ('Victim imprisoned') telah membawa kepada berita palsu yang telah diterbitkan dengan niat jahat, bertentangan dengan s 8A(1) Akta Mesin Cetak dan Penerbitan 1984 ('AMCP') ('tuduhan pertama'). Perayu telah didakwa membuat ucapan dalam mana beliau menyatakan bahawa beliau tidak berpuas hati dengan undang-undang Malaysia disebabkan oleh sikap berat sebelah (double standard) yang mengakibatkan kes rogol yang melibatkan Rahim tidak dibawa ke mahkamah dan dengan hakikat bahawa mahkamah telah memerintahkan orang yang di bawah umur tersebut ditahan selama tiga tahun sedangkan Rahim, yang seharusnya dipenjarakan kerana melanggari undang-undang, sebaliknya pula dibebaskan. Kedua-dua ulasan ini telah mengakibatkan tuduhan kedua terhadap perayu, bahawa beliau telah melakukan hasutan bertentangan dengan s 4(1)(b) Akta Hasutan 1948 ('tuduhan kedua').

Hakim perbicaraan telah mendapati perayu bersalah atas tuduhan pertama dan menjatuhkan hukuman denda sebanyak RM10,000,

jika ingkar pemenjaraan selama enam bulan. Hakim tersebut telah juga menyabitkan perayu atas tuduhan kedua dan mengenakan denda sebanyak RM5,000, jika ingkar pemenjaraan selama tiga bulan. Perayu telah merayu terhadap kedua-dua sabitan dan hukuman yang dijatuhkan terhadapnya. Pada masa yang sama, terdapat dua rayuan balas oleh Pendakwa Raya yang telah mengadu bahawa hukuman yang dijatuhkan ke atas perayu berhubung dengan setiap satu kesalahan yang dibuktikan adalah tidak memadai.

Diputuskan, menolak rayuan-rayuan perayu tetapi membenarkan rayuan balas penentang:

(1) Tidak terdapat sebarang merit dalam hujah-hujah yang dikemukakan bagi pihak perayu untuk menyokong rayuannya terhadap keputusan hakim perbicaraan atas tuduhan pertama kerana hakim perbicaraan telah mendekati perkataan-perkataan yang diadukan itu dalam konteks yang wajar. Ujian yang harus dipakai di bawah s 8A(1) AMCP adalah ujian orang kebanyakan yang menerima perkataan-perkataan tersebut menurut kefahaman kegunaannya yang biasa. Ini bermakna bahawa perkataan-perkataan 'Mangsa dipenjarakan' menyampaikan makna bahawa orang yang di bawah umur tersebut telah dipenjarakan sungguhpun dia tidak bersalah, walaupun keterangan pihak pendakwa menunjukkan bahawa orang yang di bawah umur tersebut telah tidak pernah dipenjarakan dan bahawa ketika dalam tahanan polis, dia telah tidak ditahan dalam lokap. Selanjutnya, keterangan tersebut menyokong inferens bahawa perayu telah didorong oleh niat jahat yang sebenar dalam menerbitkan perkataan-perkataan itu. Dengan itu, tidak terdapat sebarang salah arah oleh hakim sendiri ke atas undang-undang atau keterangan dan rayuan pertama, yang berhubungan dengan sabitan atas tuduhan pertama, tidak bermerit (lihat ms *****).

(2) Sesuatu pihak terikat oleh keterangan saksi-saksi yang dipanggil bagi membuktikan kesnya. Hakim perbicaraan telah mengambil kira kesemua pertimbangan yang relevan ketika membuat keputusan untuk menolak jawapan yang diberikan di bawah pemeriksaan balas. Oleh yang demikian, tidak terdapat sebarang kesilapan dalam pendekatan hakim perbicaraan kepada keterangan yang dikemukakan bagi membuktikan tuduhan kedua dan terdapatnya penilaian kehakiman akan keterangan yang sedemikian. Selanjutnya, dalam sesuatu kes di mana ia didakwa bahawa satu ucapan yang telah dibuat mengandungi dua atau lebih rangkap yang bersifat menghasut, ia terbuka dengan sewajarnya kepada sesebuah mahkamah perbicaraan untuk memerintahkan pembebasan bagi satu rangkap tetapi telah memasukkan sabitan bagi rangkap yang satu lagi. Dalam kes ini, hakim perbicaraan telah dengan hematnya meneliti keterangan tersebut sebelum membuat keputusan untuk bertindak atasnya. Tidak terdapat sebarang kesilapan dalam pertimbangan hakim

apabila beliau membuat penilaian akan kebolehpercayaan saksi-saksi pihak pendakwa (lihat ms 47A–B, 48G–H dan 49E–F).

(3) Hukuman yang dikenakan oleh hakim ke atas perayu adalah jelas tidak memadai kerana beliau tidak mengambil kira sifat serius kesalahan tersebut mahupun menumpukan pemikirannya demi kepentingan awam, dan beliau juga tidak memberikan sebarang alasan dalam mengenakan hukuman yang sedemikian. Alasan-alasan mestilah diberikan dalam mengenakan sesuatu hukuman yang tertentu bagi membolehkan mahkamah rayuan memastikan bahawa tidak terdapat sebarang kesalahan menurut prinsip. Dengan itu, hakim tersebut telah terkhilaf menurut prinsip. Mengambil kira akan kesemua keadaan kes tersebut, termasuk sifat keseriusan kesalahan dan keperluan pencegahan, dan setelah mencapai imbangan antara kepentingan awam dan kepentingan perayu, satu tempoh pemenjaraan selama 18 bulan merupakan hukuman yang wajar dijatuhkan ke atas perayu atas tuduhan pertama (lihat ms 53E–H).

(4) Atas keterangan yang dikemukakan, adalah jelas bahawa perkataan-perkataan yang diucap oleh perayu di perhimpunan tersebut adalah bersifat hasutan, dan perayu telah tidak cuba untuk berhujah sebaliknya. Ucapan atau penerbitan yang membuat pentadbiran keadilan menjadi kebencian atau penghinaan akan menghasilkan akibat yang amat serius. Walaupun s 4 Akta Hasutan 1948 memperuntukkan denda sebagai keutamaan kepada tempoh pemenjaraan sebagai hukuman, sesebuah mahkamah masih boleh menjatuhkan hukuman penjara atas kesalahan hasutan. Dalam mempertimbangkan fakta-fakta kes ini, hukuman yang dijatuhkan oleh hakim tersebut mestilah diketepikan bagi menggantikan pemenjaraan selama 18 bulan atas tuduhan kedua (lihat ms 54D–E dan 55E–F).]

Notes

For a case on ss 3(1) and 4(1)(b) of the Sedition Act 1948, see 4 *Mallal's Digest* (4th Ed, 1996 Reissue) para 2035.

For cases on appeal against conviction and sentence, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 167–168.

For cases on inadequacy of sentence, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2466–2498.

Cases referred to

Arulpragasan a/l Sandaraju v PP [1997] 1 MLJ 1 (refd)
Attorney-General v Times Newspapers Ltd [1974] AC 273 (refd)
Bhuboni Sadhu v King Emperor AIR 1949 PC 257 (refd)
Chao Chong v PP [1960] MLJ 238 (refd)
Dowse v Attorney-General, Federation of Malaya [1961] MLJ 249 (refd)
Habee Bur Rahman v PP [1971] 2 MLJ 194 (refd)
Haji Abdul Ghani bin Ishak & Anor v PP [1981] 2 MLJ 230 (refd)

Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors [1995] 2 MLJ 213 (refd)
Jegathesan v PP [1980] 1 MLJ 165 (refd)
Khoo Hi Chiang v PP [1994] 1 MLJ 265 (refd)
Lim Kit Siang v PP [1980] 1 MLJ 293 (refd)
Loo Pang v Ng Chye [1974] 2 MLJ 193 (refd)
Lorraine Phylis Cohen v PP [1989] 2 MLJ 288 (refd)
M Ratnavale v S Lourdenadin [1988] 2 MLJ 371 (refd)
Mohamed Ali v PP [1962] MLJ 230 (refd)
PP v Datuk Haji Harun bin Hj Idris [1977] 1 MLJ 15 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
PP v Mark Koding [1983] 1 MLJ 111 (refd)
PP v Ooi Kee Saik & Ors [1971] 2 MLJ 108 (refd)
PP v Paneerselvan & Ors [1991] 1 MLJ 106 (refd)
PP v Thavananthan [1994] 2 MLJ 436 (refd)
R v Baskerville [1916] 2 KB 658 (refd)
Sarbadhicary, Re (1906) 95 LT 894 (refd)
Syed Abu Bakar bin Ahmad v PP [1984] 2 MLJ 19 (refd)
TN Nathan v PP [1978] 1 MLJ 134 (refd)
Teng Ser Siong v PP [1963] MLJ 265 (refd)
Yap Ee Kong & Anor v PP [1981] 1 MLJ 144 (refd)

Legislation referred to

Courts of Judicature Act 1964
Criminal Procedure Code (FMS Cap 6)
Evidence Act 1950 s 157
Federal Constitution art 145(1)
Printing Presses and Publications Act 1984 s 8A
Rules of the Court of Appeal 1994
Sedition Act 1948 ss 2, 3(1), 4(1)
Women and Girls Protection Act 19773 s 8(2), (4)

Appeal from: Criminal Trial Nos 45–2 of 1995 and 45–3 of 1995 (High Court, Melaka)

Karpal Singh (*J Amardas, Jagdeep Singh Deo* and *Gobind Singh Deo* with him) (*Karpal Singh & Co*) for the appellant.

Azahar Mohamed and *Yusof Zainal Abidin* (*LC Tay* with them) (Deputy Public Prosecutors) for the respondent.

HIGH COURT

28 April 1997

Cur Adv Vult

Mohd Noor Abdullah H: Dengan keizinan Pendakwa Raya dan dengan perakuannya yang diberi di bawah s 8A(3) Akta Mesin Cetak dan

Penerbitan 1984 ('Akta tersebut'), s 5 Akta Hasutan 1948 dan di bawah s 418A Kanun Acara Jenayah (NMB Bab 6) ('KAJ'), Lim Guan Eng dipertuduh dan dibicarakan di Mahkamah Tinggi atas dua pertuduhan yang berikut:

Pertuduhan pertama

Bahawa kamu pada bulan Januari 1995 di dalam Daerah Melaka Tengah, dalam Negeri Melaka, dalam satu penerbitan risalah yang bertajuk Ceramah 'Kisah Benar' dengan niat jahat telah menerbitkan berita yang tidak benar iaitu:

'Mangsa Dipenjarakan'

Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 8A(1) Akta Mesin Cetak dan Penerbitan 1984 dan boleh dihukum di bawah s 8A(1) Akta yang sama.

Pertuduhan kedua

Bahawa kamu pada 19 Januari 1995 jam lebih kurang 9.40 malam di Dewan Permai Sari, Tingkat Tiga di Hotel Emperor, Jalan Munshi Abdullah, di dalam Daerah Melaka Tengah, dalam Negeri Melaka telah memberikan ucapan dalam ceramah dengan menyebut kata-kata yang menghasut iaitu:

(a) bahawa kamu menyatakan yang kamu tidak puas hati dengan undang-undang di Malaysia kerana 'double standard' yang menyebabkan kes rogol yang melibatkan Tan Sri Rahim Tamby Chik tidak dihadapkan ke mahkamah dan Peguam Negara telah menyatakan Tan Sri Rahim Tamby Chik tidak terlibat dalam kes rogol perempuan bawah umur;

(b) bahawa kamu menyatakan yang kamu tidak puas hati mahkamah memberikan keputusan supaya gadis yang terlibat dalam kes rogol itu ditahan selama tiga tahun. Sebenarnya Tan Sri Rahim Tamby Chik patut dimasukkan ke penjara dan sebaliknya orang yang melanggar undang-undang dibebaskan,

yang mempunyai kecenderungan bagi mendatangkan benci atau penghinaan atau bagi membangkitkan perasaan tidak suka terhadap pentadbiran keadilan dalam Malaysia dan oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 4(1)(b) Akta Hasutan 1948 dan boleh dihukum di bawah s 4(1) Akta yang sama.

Pada awal perbicaraan kes ini, mahkamah dikejutkan dengan sikap menempelak peguambela yang membidas mahkamah tidak berlaku adil kerana membicarakan kes tanpa menunggu kehadirannya. Pada pagi itu, mahkamah telah menetapkan pendengaran hujah kedua-dua pihak tentang permohonan pendakwa untuk menggabungkan perbicaraan kedua-dua pertuduhan itu di bawah s 165 KAJ. Pada 9 pagi, mahkamah menunggu peguambela. Pada 9.08 pagi, mahkamah diberitahu peguambela masih dalam perjalanan dan minta mahkamah menunggu entah berapa lama. Mahkamah telah meneruskan pendengaran hujah pendakwa dengan kehadiran peguambela pembantu tanpa kehadiran peguambela utama yang hadir pada 9.22 pagi ketika pendakwa sedang berhujah. Apabila pendakwa selesai berhujah, mahkamah membacakan untuk kesenangan peguambela nota keterangan yang dicatatkan semasa ketiadaannya. Ketika itulah peguambela yang dijangka berterima kasih membidas mahkamah yang penuh sesak dengan orang awam yang kelihatan berpihak dan apabila diminta menjawab hujah pendakwa, beliau tergamak berkata: 'I shall not

be cowed by this court, judges also come late'. Mahkamah menahan sabar dan mendengar telatahnya serta memberi peluang secukupnya untuk membantah permohonan pendakwa. Di akhir penghujahan mereka, mahkamah membenarkan permohonan pendakwa kerana terdapat 'proximity of time and place, continuity of action and unity of purpose or design' antara kedua-dua pertuduhan itu (*Jayaraman & Ors v PP* [1979] 2 MLJ 88). Peguambela membantah pula tentang kecacatan pertuduhan pertama yang tidak menyatakan tarikh, masa dan tempat yang khusus. Pendakwa menjawab sukar menetapkan bila dan di mana sebenarnya tertuduh menerbitkan risalah itu, sama ada semasa tertuduh menyediakan deraf atau semasa tertuduh mengarah deraf itu dicetak dan diedarkan. Mahkamah mendapati butiran yang sedia ada memadai untuk menyedarkan tertuduh kesalahan yang beliau lakukan, bila dan di mana menurut kehendak s 153 KAJ.

Mahkamah terkilan dan menukilkan peristiwa keterlaluan peguambela itu sebagai perbandingan dengan sikap tenang, tabah dan hormat tertuduh kepada mahkamah apabila mahkamah mula naik bersidang. Tertuduh juga menghormati timbalan pendakwa raya dengan menjawab soalbalasnya secara tenang dan sabar walaupun kadangkala tertuduh disindir dan diransang kemarahannya. Adalah diperhatikan tertuduh bangun berdiri tanpa disuruh untuk menerima penghakiman dan hukuman mahkamah ini sehingga mahkamah memberi peluang kepadanya untuk berkata-kata atau merayu. Tetapi lain pula telatah peguambelanya.

Fakta kes

Kes ini tercetus dengan pendedahan media massa, khususnya Utusan Malaysia, mengenai skandal seks Tan Sri Rahim Thamby Chik ('Tan Sri Rahim'), Ketua Menteri Melaka dengan gadis bawah umur. Ketua Siasatan Jenayah Melaka terus membuat laporan polis untuk menjanakan siasatan. Beliau sendiri menyiasat kes itu dan mendapatkan pernyataan dari 40 orang saksi termasuk dua orang pakar kimia dan forensik perubatan. Tan Sri Rahim menafi melakukan perhubungan seks dengan gadis itu tetapi gadis itu mengaku melakukannya. Gadis itu tidak membuat laporan polis terhadap Tan Sri Rahim tetapi beliau membuat laporan polis terhadap 14 orang lain yang melakukan perhubungan seks dengannya. Mereka didakwa, lapan orang mengaku salah dan dihukum, yang lain minta dibicarakan.

Pada awal penyiasatan kes ini, polis menahan gadis itu di Balai Polis Jalan Travers dan di Bukit Aman dengan keizinan bapanya. Kemudian, majistret memerintahkan gadis itu ditahan selama tiga tahun di Pusat Perlindungan Gadis di Rembau, Negeri Sembilan. Nenek gadis itu tidak bersetuju dan mengemukakan permohonan habeas corpus untuk membebaskan gadis itu. Hakim Mahkamah Tinggi Kuala Lumpur menolak permohonan nenek itu.

Dalam perkembangan lain, Peguam Negara setelah meneliti kertas siasatan polis telah mengumumkan keputusannya tidak mendakwa Tan Sri Rahim kerana tidak cukup keterangan untuk mendakwanya. Tertuduh

kecewa dengan keputusan itu dan mengemukakan usul di Parlimen untuk membahaskan keputusan Peguam Negara itu. Tertuduh berucap panjang lebar dan Menteri berkenaan menjawab dan menjelaskan keputusan dan budi bicara Peguam Negara.

Tertuduh masih kecewa dan tidak puas hati. Beliau mencadangkan kepada Democratic Action Party ('DAP') Melaka untuk menganjurkan ceramah kisah benar mengenai isu politik semasa yang diadakan di Emperor Hotel Melaka pada 19 Januari 1995. Tertuduh telah menyediakan deraf risalah ceramah kisah benar dan menyerahkannya kepada Setiausaha Penerangan DAP Melaka untuk dicetak dan disiarkan kepada orang ramai. Risalah itu berjodol:

> Ceramah kisah benar — Skandal Tan Sri Rahim, mana keadilan dan hak wanita, mangsa dipenjarakan, penjenayah bebas.

Pada 19 Januari 1995, tertuduh berucap di ceramah itu. Stanley Liu membuat liputan dan mencatat ucapannya. Tertuduh berucap selama 45 minit di hadapan anggaran 300 orang hadirin, kebanyakannya orang Melayu. Tertuduh berkata undang-undang negara ini 'double standard' menyebabkan Peguam Negara memutuskan tidak mendakwa Tan Sri Rahim dan mahkamah menahan gadis yang tidak bersalah selama tiga tahun dan membebaskan Tan Sri Rahim yang sepatutnya dipenjarakan kerana melanggar undang-undang.

Pertuduhan pertama

Mengenai kesalahan menerbitkan berita tidak benar di bawah s 8A(1) Akta tersebut, pendakwa hendaklah membuktikan tanpa keraguan munasabah sebagaimana diputuskan dalam kes *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 (yang terpakai ketika itu) setiap intipati pertuduhan itu:

(1) Berita tidak benar;
(2) Ada diterbitkan;
(3) Dalam suatu penerbitan; dan
(4) Tertuduh adalah penerbit berita tidak benar itu.

Apabila intipati tersebut terbukti maka hendaklah dianggap tertuduh mempunyai niat jahat untuk menerbitkan berita tidak benar itu, sekiranya tidak ada keterangan yang menunjukkan bahawa sebelum penerbitannya, tertuduh telah mengambil langkah yang munasabah untuk menentusahkan kebenaran berita itu (s 8A(2) Akta tersebut).

Adalah jelas semua penerbitan berita tidak benar dianggap diterbitkan dengan niat jahat penerbit, maka beban membuktikan sebaliknya terletak kepada penerbit berita tidak benar itu. 'Seksyen 8A(2) Akta itu semata-mata suatu peruntukan yang membalikkan beban membukti yang timbul jika pihak pendakwa dapat membuktikan bahawa berita yang diterbitkan itu adalah palsu dan tertuduh merupakan pencetak, penerbit, penyunting atau penulisnya. Oleh itu, s 8A(2) yang merupakan suatu anggapan statutori yang beroperasi pada peringkat perbicaraan untuk membantu pihak pendakwa dengan menganggap niat jahat apabila kepalsuan berita itu yang diterbitkan itu dibuktikan, tidak boleh disamakan dengan pra-penapisan,

A yang jika ianya berlaku, hanya boleh berlaku sebelum penerbitan', demikian kata Edgar Joseph Jr HMA dalam *PP v Pung Chen Choon* [1994] 1 MLJ 566. (Penghakiman asal diberi dalam Bahasa Inggeris.)

(1) Terbit/penerbit/penerbitan

B Terbit ertinya siap dicetak dan diedarkan, dan tersiar. Menerbitkan ertinya mengeluarkan dan mengedarkan (buku, majalah dan lain-lain) — *Kamus Dewan*, Edisi 1970.

Risalah ceramah kisah benar, eks P11B, ialah suatu kertas yang padanya ada dicetak huruf, angka dan tanda, dan ia juga suatu bahan bercetak yang C mengandungi representasi yang boleh dilihat atau dengan apa jua cara boleh membayangkan kata-kata atau idea dan kerana itu risalah P11B ialah satu penerbitan sebagaimana perkataan itu ditakrif di bawah s 2 Akta tersebut. Tertuduh ialah Pengerusi Pemuda DAP Nasional serta Setiausaha DAP Melaka. Tertuduh telah mencadangkan kepada DAP Melaka untuk menganjurkan ceramah kisah benar mengenai isu politik semasa dan untuk D tujuan itu tertuduh telah memberi deraf risalah P11 kepada Yew Kok Kee (SP14), Setiausaha Penerangan DAP Melaka untuk dicetak dan diedarkan. Yew Kok Kee telah menghantar deraf risalah itu kepada Winwah Printing Sdn Bhd untuk mencetaknya sebanyak 5,000 keping. Kecuali dua tiga keping untuk simpanan pejabat, kesemua risalah itu disiarkan dan diedarkan E kepada orang ramai dan sekeping sampai ke tangan Korporal Zakaria bin Budin (SP7) yang berakhir di mahkamah ini sebagai eks P11B. Maka terbukti tertuduh ialah penerbit risalah itu.

(2) Berita tidak benar

F Teks yang tersiar dalam P11B ialah:

> Skandal Tan Sri Abdul Rahim Tamby Chik, mana keadilan dan hak wanita, mangsa dipenjarakan, penjenayah bebas, penceramah:
>
> ...
>
> Pendek bte Ahmad (nenek gadis bawah umur).

G

Berita tidak benar itu terhad dan khusus kepada berita 'mangsa dipenjarakan'. Perkataan 'penjara' ertinya tempat atau bangunan penjenayah dikurung sebagai hukuman dan 'dipenjara' atau 'dipenjarakan' ertinya 'penjenayah' dikurung dalam penjara sebagai hukuman — *Kamus Dewan*, H Edisi Baru, Dewan Bahasa dan Pustaka 1991. Menurut kaedah pentakrifan statut, pengertian sesuatu perkataan atau ungkapan hendaklah ditakrif menurut konteksnya. Mangsa dipenjarakan berpaut kepada skandal Tan Sri Rahim, mana keadilan dan hak wanita. Mangsa dipenjarakan adalah bersilang dengan penjenayah bebas. Sepatutnya demi keadilan, mangsa bebas, penjenayah dipenjarakan, bukan sebaliknya. Maka dalam konteks I 'mana keadilan', ungkapan 'mangsa dipenjarakan' hendaklah bererti mangsa dipenjarakan sebagaimana penjenayah dipenjarakan iaitu dikurung di tempat atau bangunan sebagai hukuman. Mangsa ialah gadis bawah umur yang berkaitan dengan skandal Tan Sri Rahim dan cucu kepada penceramah Pendek bte Ahmad. Ditahan dalam siasatan atau ditahan dalam tahanan mahupun ditahan di bawah perlindungan bukan dipenjarakan. Menurut

ACP Mok Siew Hoong (SP12) yang menyiasat kes skandal seks Tan Sri Rahim, berita mangsa dipenjarakan dalam risalah itu adalah tidak benar, gadis bawah umur itu tidak dipenjarakan dalam ertikata gadis itu didakwa di mahkamah, disabitkan kesalahan dan dihukum penjara. Gadis itu ditahan dalam siasatan dan diletak bawah jagaan polis di Balai Polis Jalan Travers dan kemudian di Bukit Aman. Keluarga melawatnya, bapanya memberi keizinan menahannya. Selepas itu, majistret memerintahkan gadis itu ditahan selama tiga tahun di Pusat Perlindungan Gadis dan Wanita di Taman Seri Puteri, Rembau, Negeri Sembilan. Nenek gadis itu tidak bersetuju dan mengemukakan permohonan habeas corpus untuk membatalkan perintah majistret itu tetapi hakim Mahkamah Tinggi Kuala Lumpur menolak permohonan nenek itu. Maka jelaslah gadis itu tidak dipenjarakan. Berita mangsa dipenjarakan adalah berita tidak benar.

(3) Niat jahat

Seksyen 8A(2) Akta tersebut memperuntukkan:

> Bagi maksud-maksud seksyen ini, hendaklah dianggap ada niat jahat sekiranya tidak ada keterangan yang menunjukkan bahawa sebelum penerbitannya, tertuduh telah mengambil langkah-langkah yang munasabah untuk menentusahkan kebenaran berita itu.

Mahkamah mendapati tidak ada sebarang keterangan yang menunjukkan bahawa sebelum penerbitannya, tertuduh telah mengambil langkah yang munasabah untuk menentusahkan kebenaran berita itu. Tertuduh tidak semestinya mematahkan anggapan niat jahat itu semasa pembelaan (jika dipanggil). Tertuduh boleh berbuat demikian semasa pembentangan kes pendakwaan.

Akta Mesin Cetak dan Penerbitan 1984 tidak memperuntukkan penyiaran berita tidak benar 'ipso facto' adalah satu kesalahan dan boleh dihukum; ia memperuntukkan penyiaran berita tidak benar yang disiarkan dengan niat jahat adalah satu kesalahan. Sama ada berita tidak benar itu disiarkan dengan niat jahat atau tidak bergantung kepada hal keadaan berita itu disiarkan. Tertuduh tahu gadis itu tidak dikurung dalam penjara kerana gadis itu ialah mangsa seks. Tertuduh tahu gadis itu ditahan polis di Bukit Aman. Tertuduh telah berucap di Parlimen dengan teliti menyatakan 'gadis itu ditahan polis pada 30 Ogos 1994' — 'gadis itu dalam kurungan polis', 'gadis itu ditahan dalam perlindungan polis' (disiarkan dalam penyata rasmi Parlimen — eks P20) dan tidak sekalipun tertuduh berucap 'gadis itu dipenjarakan'. Perdana Menteri dan Dato' Syed Hamid Albar menjelaskan gadis itu diberi perlindungan semasa dalam siasatan. Maka siaran berita 'mangsa dipenjarakan' dalam risalah P11B ciptaan tertuduh adalah disiarkan dengan niat jahat untuk menarik perhatian dan mengelirukan orang ramai.

Pertuduhan kedua

Mengenai kesalahan menyebut perkataan menghasut di bawah s 4(1)(b) Akta Hasutan 1948, pendakwa hendaklah membuktikan pula:

A (1) Tertuduh menyebut perkataan yang dinyatakan dalam butiran (a) dan (b) dalam pertuduhan itu;

(2) Testimoni yang diberi oleh seorang saksi sahaja hendaklah disokong; dan

(3) Perkataan itu menghasut.

B Garis panduan bagi memutuskan tentang pendakwaan kes menghasut dijelaskan oleh Raja Azlan Shah J dalam kes *PP v Ooi Kee Saik & Ors* [1971] 2 MLJ 108 di ms 111 seperti berikut:

> In my view, what the prosecution have to prove and all that the prosecution
> C have to prove is that the words complained of, or words equivalent in substance to those words, were spoken by [the first] accused at the dinner party. Once that is proved, the accused will be conclusively presumed to have intended the natural consequences of his verbal acts and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in s 3(1) of the Act. It is immaterial whether or not the words complained of could have the effect of producing or did in fact produce any
> D of the consequences enumerated in the section. It is also immaterial whether the impugned words were true or false (see *Queen Empress v Ambra Prasad* (1898) ILR 20 All 55). And it is not open to the accused to say that he did not intend his words to bear the meaning which they naturally bear (see *Maniben v Emperor* AIR 1933 Bom 65).

E Wan Sulaiman FJ dalam kes *PP v Oh Keng Seng* [1977] 2 MLJ 206 di ms 211 pula berkata:

> Again whilst we would with respect agree that the prosecution is not obliged to prove that anything said in the speech was true or false, evidence to show that the allegations made were false whether wilfully or inadvertently so,
> F would increase the likelihood that such utterances would have a seditious tendancy.

Adalah diperhatikan tertuduh dipertuduh menghasut terhadap dua komponen pentadbiran keadilan di negara ini iaitu pendakwaan dan kehakiman. Pendakwaan meliputi penyiasatan, penangkapan oleh
G penguatkuasa undang-undang seperti polis dan arahan serta keputusan Pendakwa Raya. Mahkamah pula adalah tunjak dan tunjang keadilan. Neraca keadilan antara hak dan batil, kebenaran dan kepalsuan berada di mahkamah dan di sinilah tempat perlindungan dari segala kezaliman dan penindasan. Mahkamah hendaklah tidak dicemar dan tercemar. Kepercayaan rakyat terhadap mahkamah hendaklah tidak terhakis.

H Tertuduh tokoh politik dari parti pembangkang; berpengalaman dan berpengaruh setelah tiga penggal menjadi wakil rakyat sejak 1986. Tertuduh Pengurusi Pemuda DAP Kebangsaan dan Setiausaha DAP Melaka. Berita skandal seks Tan Sri Rahim digeladakkan dalam media massa tetapi apabila asap tebal geladak itu menghilang rupa-rupanya gadis itu ditahan,
I Tan Sri Rahim tiada diapa-apakan, lapan teruna nakal didakwa, mengaku salah dan dihukum ikat jamin berlaku baik. Jika tertuduh melihat ada muslihat di sebalik penahanan gadis itu, ada pihak bermain sandiwara tentang pendakwaan teruna itu dan keputusan Peguam Negara berbau politik, maka tertuduh berhak dan bertanggungjawab untuk bersuara.

Tertuduh bukan 'busybody'. Tertuduh ahli politik sepenuh masa. Mahkamah mengiktaf kebebasan bersuara dalam pemerintahan demokrasi adalah baja yang menyuburkan demokrasi dan ketiadaannya boleh menguburkan demokrasi.

(1) Menyebut perkataan dalam butiran (a) dan (b) dalam pertuduhan

Korporal Stanley Liu ('SP2') telah diarah oleh ketuanya untuk membuat liputan khas tentang ucapan tertuduh di ceramah kisah benar tersebut. Tertuduh berucap selama 45 minit dalam Bahasa Malaysia, Inggeris dan Cina di hadapan lebih kurang 300 orang, kebanyakannya orang Melayu. Beliau mendengar tertuduh berucap bahawa tertuduh tidak puas hati dengan undang-undang negara ini kerana 'double standard'. Inilah sebab kes rogol Tan Sri Rahim tidak dibawa ke mahkamah. Peguam Negara telah menyatakan Tan Sri Rahim tidak terlibat dalam kes perempuan bawah umur. Tertuduh juga tidak puas hati mahkamah memberi keputusan gadis yang terlibat dalam kes rogol ditahan selama tiga tahun; sebenarnya Tan Sri Rahim patut dimasukkan ke penjara, sebaliknya orang yang tidak bersalah dimasukkan ke dalam penjara dan orang yang melanggar undang-undang dibebaskan. Stanley Liu mencatatkan semasa itu juga ucapan tertuduh dalam sehelai kertas dan selepas selesai ceramah itu, beliau balik ke pejabat dan menaip ucapan tertuduh ke dalam kertas lain. Ucapan yang disalin itu dikemukakan di mahkamah dan ditanda sebagai eks P6 yang menjadi asas pertuduhan kedua. Tertuduh mengajukan kepada SP2 bahawa keterangannya tidak benar tetapi tidak pula mencadangkan apa sebenarnya diucapkan tertuduh. Yew Kok Kee ('SP14') ialah seorang penceramah di ceramah itu dan apabila diperiksabalas oleh peguambela beliau menafikan tertuduh berkata sebagaimana dipertuduh. SP14 mengiakan saja pemeriksaanbalas peguambela sebagaimana diajukan kepadanya dan apabila mahkamah bertanya apa yang 'ya', Yew Kok Kee menjawab Tan Sri Rahim tidak ditangkap atau ditahan, sekadar itu sahaja. Mahkamah mendapati nilai keterangan sedemikian sangat lemah. Mahkamah menerima keterangan itu hanya bagi maksud mengajukan pembelaan yang hendak dibentangkan sekiranya pembelaan dipanggil nanti.

Stanley Liu ialah saksi penting, maka keterangannya ditapis dengan ayak yang halus dan setiap kenyataannya diperiksa dengan pengukur penilaian maxima dengan memberi pertimbangan — umpamanya alat perakam tidak digunakan, kertas nota catatan dimusnahkan, kemungkinan salah-tanggapan atau silap-faham ucapan tertuduh, kecurigaan tertuduh tentang kejujuran saksi ini yang bertugas di cawangan khas. Mahkamah menilai dan menerima alasan kenapa alat perakam tidak digunakan dan kenapa kertas nota catatan dimusnahkan dan setelah memerhatikan kelakuan saksi ini, cara ia menjawab pemeriksaan pendakwa dan pemeriksaanbalas peguambela, khususnya beliau bersetuju dengan cadangan peguambela bahawa tertuduh menyebut perkataan 'dipenjarakan', 'ditahan' saling berganti dan mengambilkira saksi ini berpangkat rendah sekadar menjalankan tugas, maka mahkamah merumus dan sedia memperakukan bahawa Stanley Liu ialah saksi benar. Mahkamah menerima keterangannya.

A Yew Kok Kee diajukan dalam pemeriksaanbalas peguambela: adakah benar apa yang dikatakan oleh tertuduh tentang skandal seks ialah bahawa ada 'double standard' apabila gadis yang terlibat dengan Tan Sri Rahim telah ditahan oleh polis selama lapan hari dan Tan Sri Rahim tidak ditangkap oleh polis atau ditahan bawah tahanan kerana disyaki terlibat dengan gadis bawah umur.

B

Jawab saksi: Ya.

Mahkamah bertanya: Apa yang ya?

Jawab saksi: Rahim tidak ditangkap atau ditahan.

C Yew Kok Kee berkata tertuduh ialah komrad seperjuangan. Beliau memberi keterangan memakai 'black armband' sebagai tanda protes parti terhadap keputusan mendakwa tertuduh di mahkamah. Mahkamah mendapati saksi ini menunjukkan kecenderungan berat sebelah memihak tertuduh. Saksi ini tidak menyatakan apa tertuduh berkata tapi beliau mengiakan apa yang dikatakan tertuduh berkata. Nilai keterangan sebegini luntur dan lemah.
D Tambahan pula, ceramah itu telah berlalu dua tahun silam dan jawapan saksi semata-mata dari ingatan yang tidak lagi segar dan cerah. Mahkamah berat hendak menerima keterangan saksi berpihak dan berkepentingan dalam aspek apa sebenarnya tertuduh berucap pada malam itu.

E (2) Keterangan menyokong

Menurut s 6(1) Akta Hasutan 1948, tiada seorang pun boleh disabitkan kerana sesuatu kesalahan di bawah s 4 atas testimoni yang tidak disokong yang diberi oleh seorang saksi. Pendakwa telah mengemukakan sebagai eks P6 nota catatan bertaip Stanley Liu. Di bawah tajuk 'Ucapan Lim
F Guan Eng', saksi tersebut mencatatkan:

Beliau antara lain menyatakan:

(d) beliau rasa tidak puas hati dengan undang-undang Malaysia kerana 'double standard' inilah sebab kes rogol Rahim tidak dibawa dalam mahkamah dan Peguam Negara telah menyatakan Rahim tidak terlibat
G dalam kes rogol perempuan bawah umur; dan

(e) beliau rasa tidak puas hati mahkamah memberi keputusan supaya gadis yang terlibat dalam kes rogol ini ditahan selama tiga tahun; sebenarnya Tan Sri Rahim patut dimasukkan dalam penjara dan sebaliknya orang yang tidak salah masuk dalam penjara dan orang yang melanggar undang-undang yang dibebaskan.

H

Nota catatan eks P6 dikatakan boleh menyokong testimoni Stanley Liu dan boleh menyabitkan kesalahan tertuduh di bawah s 4. Mahkamah ini berpendapat walaupun nota catatan itu merupakan pernyataan terdahulu yang boleh diterima untuk menyokong testimoni Stanley Liu di bawah s 157 Akta Keterangan 1950 dan mendapati nilai keterangan itu untuk
I menyokong testimoni Stanley Liu adalah kuat dan berkesan tetapi nota catatan yang dibuat sendiri oleh saksi itu bukan keterangan menyokong yang menguat dan meyakinkan kebenaran keterangan SP2 sehingga boleh menyabitkan tertuduh. Testimoni yang tidak disokong yang diberi oleh

seorang saksi dalam konteks s 6 Akta Hasutan 1948 bermaksud ketiadaan keterangan menyokong, dalam erti-kata 'evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirms in some material particular not only that the evidence that the crime has been committed, but also that the prisoner committed it' — *R v Baskerville* [1916] 2 KB 658. Keterangan yang menyokong ialah 'independent' testimoni dan bukan pernyataan bertulis saksi itu sendiri: 'a witness cannot corroborate himself' — *R v Job Whitehead* [1929] 1 KB 102.

Walaupun demikian, mahkamah mendapati keterangan Stanley Liu disokong oleh keterangan Zakaria Budin (SP7) ('Zakaria'). Zakaria berkata tertuduh menyentuh tentang rasa tidak puas hati dengan undang-undang negara ini sebagai 'double standard' dan tindakan mahkamah yang menahan mangsa dan membebaskan Rahim. Seorang lagi saksi, Insp Lok Yoke Choy (SP13) ('Insp Lok') juga berkata dia dengar tertuduh kata 'double standard' Rahim tidak dihadapkan ke mahkamah, dan gadis terlibat dalam kes rogol ditahan selama tiga tahun. Insp Lok mengesahkan nota catatan P6 adalah benar diucapkan oleh tertuduh kerana dia membaca dan menyemak nota catatan itu pada malam itu juga. Keterangan Zakaria tidak dicabar. Keterangan Insp Lok juga tidak dicabar. Maka testimoni SP2 disokong oleh Zakaria dan Insp Lok pada perkara yang matan dan kerana itu boleh menyabitkan kesalahan tertuduh. Kredibiliti Stanley Liu bertambah mantap apabila Insp Lok mengesahkan isi nota catatan itu benar.

(3) Menghasut

Menghasut ertinya menyebut apa-apa perkataan yang mempunyai kecenderungan menghasut termasuk kecenderungan bagi mendatangkan kebencian dan penghinaan atau membangkitkan perasaan tidak suka terhadap pentadbiran keadilan di negara ini (ss 2 dan 3 Akta Hasutan 1948). Tertuduh berkata undang-undang negara ini 'double standard' dan sebab itulah Tan Sri Rahim tidak didakwa. Fahaman pendengar terhadap ucapan tertuduh ialah undang-undang negara ini tidak adil dan saksama; ada undang-undang untuk orang berpangkat, berkuasa dan berpengaruh seperti Tan Sri Rahim dan ada undang-undang lain untuk orang biasa. Ini tidak benar. Semua orang mempunyai hak yang sama dan diberi hak perlindungan yang sama di sisi undang-undang dan ini terjamin dalam Perlembagaan Persekutuan (perkara 8 Perlembagaan Persekutuan). Peguam Negara berkata beliau tidak mendakwa Tan Sri Rahim kerana tidak cukup keterangan walaupun terdapat syak yang kuat untuk mendakwanya; bukan kerana undang-undang negara 'double standard'. Peguam Negara membuat keputusan setelah mengkaji kertas siasatan polis dan menimbangkan kredibiliti/kebolehpercayaan gadis itu, latarbelakang dan peribadinya. Peguam Negara adalah pegawai undang-undang tertinggi negara dan kepadanya Perlembagaan Persekutuan memberi kuasa penentu untuk mendakwa atau tidak mendakwa seseorang (perkara 145 Perlembagaan Persekutuan). Peguam Negara hendaklah dianggap bertindak jujur, 'bona

A fide' dan hal keadaan kes Tan Sri Rahim tidak menunjukkan sebaliknya. Ucapan tertuduh mendatangkan kebencian atau sekurang-kurangnya membangkitkan perasaan tidak suka terhadap pentadbiran keadilan negara ini.

Tertuduh berkata mahkamah telah menahan gadis itu selama tiga
B tahun. Ini benar. Tetapi tertuduh menambah mahkamah telah menahan gadis yang tidak bersalah dan sebaliknya membebaskan Tan Sri Rahim yang melanggar undang-undang dan yang sepatutnya dimasukkan ke dalam penjara. Sebenarnya, mahkamah menahan gadis itu selama tiga tahun hanya setelah berpuas hati gadis itu memerlukan perlindungan. Terbukti gadis itu sendiri bersetuju dan bapa merestui. Nenek gadis tidak bersetuju
C dan mencabar perintah majistret dengan permohonan habeas corpus tetapi hakim Mahkamah Tinggi menolak permohonan itu dan mengesahkan perintah tahanan tersebut. Ucapan tertuduh difahami pendengar bahawa mahkamah menganiayai dan menzalimi gadis itu dan sebaliknya menyelamatkan Tan Sri Rahim. Ucapan tertuduh mendatangkan kebencian
D terhadap mahkamah dan pentadbiran keadilan.

Sebelum tertuduh berucap di ceramah kisah benar, tertuduh berucap selama 45 minit di Parlimen mengenai keputusan Peguam Negara tidak mendakwa Tan Sri Rahim melalui usul bagi membincangkan perkara tertentu, segera demi kepentingan orang ramai (peraturan mesyuarat 18(1)). Tertuduh mengkhuatiri Peguam Negara membuat 'massive cover-up' ala
E kes pita lucah DP Vijandran, Timbalan Speaker. Tertuduh membidas Peguam Negara kerana membuat keputusan berbau politik untuk menyelamatkan Tan Sri Rahim, mendedahkan keaiban dan peribadi gadis itu dengan 14 orang lain dan menjadikan undang-undang negara ini songsang dengan mengurung gadis itu dan tiada sesiapa membelanya.
F Malah ada ura-ura hendak mendakwa gadis itu di mahkamah syariah (penyata rasmi Parlimen penggal ketiga 24–10–1994 — eks P20).

Mahkamah telah meneliti ucapan tertuduh di Parlimen dan mendapati kritikan dan kutukan terhadap Peguam Negara yang begitu hebat dan teruk adalah masih jauh dari ambang garis pemisah antara kebebasan
G bersuara dengan sekatan menghasut kerana antara lain, forumnya bersesuaian, pendengarnya sesama orang politik. Cuma kasihan Peguam Negara tidak berpeluang menjawab tuduhan terhadapnya kerana beliau bukan ahli dewan walaupun Menteri berkenaan telah menjawab baginya.

Tertuduh telah membawa geramnya kepada rakyat melalui ceramah kisah benar. Tertuduh berucap kepada 300 orang yang kebanyakannya
H orang Melayu. Nenek tua gadis itu pun dinamakan sebagai penceramah dan dia berucap pada malam itu. Tertuduh tidak berucap seperti di Parlimen. Tertuduh menukuk-tambah, mungkin terdorong oleh perasaan, dan terlanjur melintasi sempadan pemisah kebebasan bersuara dan sekatan menghasut. Mahkamah menilai ucapan tertuduh dalam konteks di atas
I dan mendapati ucapan tertuduh adalah menghasut.

Di akhir kes pendakwaan, mahkamah memutuskan bahawa pendakwaan telah membuktikan setiap intipati yang perlu bagi kesalahan menerbit berita tidak benar di bawah s 8A(1) Akta tersebut dalam

pertuduhan pertama dan bagi kesalahan menghasut di bawah s 4(1)(b) Akta Hasutan 1948 dalam pertuduhan kedua, tanpa apa-apa keraguan munasabah mengikut keputusan majoriti kes *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 yang terpakai ketika itu dan seterusnya memanggil tertuduh membuat pembelaan.

Pembelaan — pertuduhan pertama

Tertuduh mengaku menyedia dan mengarahkan untuk diterbitkan risalah eks P11 yang mengandungi berita yang diilhamkan dari tajuk berita akhbar *The Star* bertarikh 9 November 1994 karangan Marina Mahathir. Tertuduh menyediakan teks Bahasa Inggeris dan terjemahan teks Bahasa Malaysia. Tertuduh menggunakan perkataan 'mangsa dipenjarakan' dalam konteks keseluruhan teks itu dan mengikut aliran pemikirannya ketika itu. Tertuduh tidak bermaksud malahan tidak terlintas 'dipenjarakan' bererti menjalani hukuman dalam penjara. Apa yang dimaksudkan oleh tertuduh ialah penahanan tidak sah gadis itu antara 30 Ogos 1994 sehingga 8 September 1994 semasa gadis itu ditahan di Balai Polis Jalan Travers dan di Bukit Aman tanpa kebenaran bapanya yang hanya memberi kebenaran pada 8 September 1994 berkuatkuasa kebelakangan.

Tertuduh faham perkataan reman, tahan dan penjara adalah saling bertukarganti/'interchangeable'. Maka fahaman tertuduh tentang erti 'dipenjarakan' berlainan dengan erti sebenar perkataan itu dan berlainan juga dengan erti yang difahamkan secara munasabah oleh orang yang mendengarnya. Erti sebenar dipenjarakan ialah ditahan dalam penjara bagi menjalani hukuman dan itulah fahaman yang munasabah orang yang mendengarnya.

Tertuduh telah berucap di Parlimen tentang penahanan gadis itu di Bukit Aman tetapi tidak sepatah pun tertuduh berkata gadis itu dipenjarakan. Tertuduh ditanya oleh timbalan pendakwa raya: jika gadis itu dipenjarakan selama 10 hari itu, adakah gadis itu ditahan atau dipenjarakan selepas itu? Tertuduh menjawab gadis itu dipenjarakan. Mahkamah tidak dapat menerima hakikat itu kerana Perdana Menteri telah memberitahu tertuduh 'gadis itu akan ditamatkan perlindungannya oleh pihak polis apabila siasatan telah selesai dan keselamatannya terjamin'. Dato' Syed Hamid Albar dalam ucapan balasnya di Parlimen memberitahu 'gadis itu perlu dilindungi semasa dalam siasatan polis'. Tertuduh tahu gadis itu diberi perlindungan dan tertuduh tahu gadis itu ditahan dengan perintah majistret kerana tertuduh telah membantu nenek gadis itu untuk mendapatkan khidmat peguam bagi mencabar perintah majistret. Hakim Mahkamah Tinggi telah mengesahkan kesahihan penahanan itu dan adalah tidak munasabah tertuduh masih berdegil mengatakan gadis itu dipenjarakan.

Tertuduh berucap di ceramah kisah benar gadis itu ditahan atau dipenjarakan selama tiga tahun; tertuduh tidak pernah berucap gadis itu ditahan atau dipenjarakan selama 10 hari. Adalah tidak munasabah tertuduh mencanangkan isu gadis itu ditahan atau dipenjara selama 10 hari yang bukan berita sensasi dan tidak padan atau cukup lama untuk dihebohkan kepada orang ramai.

A Seterusnya, tertuduh mencari helah untuk melepaskan diri dari pertuduhan ini dengan mengadakan cerita kononnya gadis itu memberitahu neneknya yang dia (gadis itu) dipenjarakan dan nenek itu menyampaikan kepada tertuduh cucunya mengadu dia dipenjarakan di Bukit Aman.

Gadis itu dalam keterangannya berkata dia ditahan dalam satu bilik B yang selesa dan bebas bergerak di persekitaran kawasan itu. Dia dibantu menghadapi Peperiksaan Menengah Rendah dan dibantu mendapatkan pakaiannya di kampung. Dia tidak mengadu. Maka tiada sebab dia mengadu kepada neneknya yang dia dipenjarakan. Cerita ini tidak munasabah. Nenek itu terang-terang menjadi saksi burung tiong. Dia berkata dalam mahkamah cucunya dipenjarakan tanpa disoal mengenainya dan apabila C peguambela memandu saksi dengan mengajukan soalan: 'Adakah kamu beritahu Lim cucu kamu dipenjarakan?', pendakwa membantah dan mahkamah tak benarkan soalan itu, nenek itu tiba-tiba pengsan dan rebah. Mahkamah menangguhkan perbicaraan. Bila mahkamah bersidang semula, peguambela masih hendakkan jawapan dari nenek itu dan bertanya:

D Soalan: Apa beritahu Lim?

Jawapan: Saya tak cakap apa-apa.

Mahkamah ulangi soalan.

Jawapan: Saya tak cakap apa-apa.

E Soalan: Selepas itu bila balik ada cakap apa-apa pada YB?

Jawapan: Saya tak jumpa dia lagi.

Soalan diulangi.

Jawapan: Saya tak cakap apa-apa lagilah.

F Soalan: Langsung tak cakap apa-apa?

Soalan: Tidak.

Lihatlah betapa terdesak dan sejauh mana peguambela sanggup mempertaruhkan maruah keadilan dengan menyoal sedemikian rupa dan G terus menyoalnya sehingga nenek itu terlepas kata bahawa cakap cucunya tidak benar dan terus melentok dan pengsan kali yang kedua. Dua setengah bulan kemudian, peguambela masih bertanya lagi seperti ini:

Soalan: Ada YB kata apa-apa?

H Jawapan: Saya beritahu YB cucu saya kata dia dipenjarakan di Bukit Aman;

dan apabila diperiksabalas oleh Pendakwa Raya, mahkamah kasihan melihat nenek itu pengsan kali yang ketiga. Nenek itu sudah tua, dia tidak pandai bercakap bohong dan apabila tertekan, itulah reaksinya.

Nampaknya nenek itu terhutang budi kepada tertuduh kerana dengan I pertolongan tertuduh dia dapat berjumpa cucunya. Tertuduh menolong mendapatkan khidmat peguam. Nenek itu cuba menolong tertuduh dengan berkata dia ada beritahu tertuduh cucunya mengadu dia dipenjarakan. Tetapi mahkamah mendapati gadis itu tiada asas mengadu sedemikian dan cara nenek itu memberi keterangan nampak sangat dia diasuh bercakap begitu. Keterangan nenek itu tidak dapat diterima, tidak munasabah dan

jelas direka. Pembelaan tertuduh tentang pertuduhan pertama tidak munasabah dan tidak menimbulkan sebarang keraguan munasabah terhadap kes pendakwaan.

Pembelaan — pertuduhan kedua

Tertuduh menafikan berucap sebagaimana dinyatakan dalam pertuduhan kedua. Sebenarnya tertuduh berucap menyatakan tidak puas hati terhadap tindakan polis dan keputusan Peguam Negara. Polis tidak menahan Tan Sri Rahim sepertimana biasa dilakukan dalam kes rogol. Peguam Negara memutuskan untuk mendakwa 14 orang lain atas pertuduhan merogol gadis itu tetapi terhadap Tan Sri Rahim, Peguam Negara memutuskan tidak cukup keterangan untuk mendakwanya. Maka tertuduh berkata tindakan polis dan keputusan Peguam Negara memberi gambaran undang-undang negara ini 'double standard'. Perbezaan ucapan tertuduh sebagaimana diucapkan sebenarnya dan sebagaimana didengar dan difahamkan oleh saksi-saksi pendakwa adalah tipis. Tertuduh membidas perlaksanaan undang-undang negara ini 'double standard', bukan undang-undang itu 'double standard'. Mahkamah telah menimbangkan kemungkinan saksi-saksi pendakwa terkeliru. Mahkamah juga telah menimbangkan kemungkinan tertuduh sendiri cuba mengelirukan mahkamah. Setelah menimbangkan faktor seperti pita rakaman tidak digunakan bagi menentukan sah benar ucapan tertuduh, pangkat dan pelajaran saksi-saksi pendakwa, keseluruhan ucapan tertuduh di Parlimen yang mengutuk dengan tajam dan keras tindakan polis dan keputusan Peguam Negara, ketakmungkinan tertuduh sebagai ahli Parlimen yang berpelajaran tinggi dan berpengalaman mengutuk undang-undang yang diluluskan oleh Parlimen sebagai 'double standard', mahkamah memutuskan tertuduh mungkin berucap sebagaimana dikatakannya dan ucapan sedemikian pada pendapat mahkamah tidak menghasut. Keputusan Peguam Negara menurut budi bicaranya untuk mendakwa atau tidak mendakwa Tan Sri Rahim boleh dipersoalkan, dikritik atau dibahaskan. Tetapi ada batasnya. Kritikan itu hendaklah berpada, berasas, berpatutan dan tidak mencaci-hamun, 'mala fide' atau berniat jahat terhadapnya atau keputusannya. Kes skandal seks Tan Sri Rahim menarik perhatian orang ramai dan tertuduh serta partinya sudah tentu mengambil kesempatan mengutuk kerajaan dan mencari laba politik. Dalam konteks pertarungan pengaruh politik, keghairahan tertuduh bersuara tentang penahanan gadis itu yang menghasilkan laporan polis dibuat terhadap 17 orang lain tetapi tiada laporan polis dibuat terhadap Tan Sri Rahim, pendakwaan lapan orang yang hanya dihukum ikat jamin berkelakuan baik, pernyataan Peguam Negara bahkan ada syak yang kuat Tan Sri Rahim melakukan kesalahan itu serta keengganan Peguam Negara menafikan Tan Sri Rahim melakukan hubungan seks dengan gadis itu, tindakan tertuduh memberitahu orang ramai rasa tidak puas hati dan marah sekalipun terhadap polis dan Peguam Negara, adalah berpatutan dan munasabah dalam ruang lingkup kebebasan bersuara dan meluahkan perasaan. Ucapan tertuduh kerana tidak puas hati terhadap tindakan polis dan keputusan Peguam Negara yang seolah-olah undang-undang negara ini 'double standard' adalah bukan menghasut terhadap pentadbiran keadilan.

A Mengenai butiran (b) dalam pertuduhan kedua, tertuduh memberi keterangan dalam pemeriksaan awal: 'Saya tidak bercakap sebagaimana dinyatakan dalam (b)' dan dalam pemeriksaanbalas, tertuduh menjawab: 'Saya ada menyebut mahkamah perintahkan gadis itu ditahan selama tiga tahun. Saya kata itu sebagai satu fakta tanpa komen apa-apa'. Menurut saksi pendakwa, tertuduh menambah ucapan itu dengan berkata mahkamah B menahan gadis yang tidak bersalah selama tiga tahun tetapi Tan Sri Rahim yang melanggar undang-undang tidak dipenjarakan tetapi dibebaskan. Mahkamah mendapati tertuduh berucap sebagaimana difahami oleh SP2 dan dicatatkan dalam P6 dan disokong oleh SP7 dan SP13. Adalah tidak munasabah tertuduh hanya berkata gadis itu ditahan selama tiga tahun C sebagai satu fakta benar tanpa apa-apa komen. Ia tidak konsisten dengan tajuk ceramah dan tujuan ceramah kisah benar. Mahkamah telah meneliti nota catatan Stanley Liu dalam eks P6 dan menimbangkan benar atau mungkin tak benar tertuduh berucap sedemikian dan setelah mengambilkira keseluruhan fakta kes ini seperti ucapan tertuduh di Parlimen, catatan spontan saksi ini yang disokong oleh saksi-saksi lain, adalah didapati D tertuduh tidak mungkin bercakap mahkamah menahan gadis itu selama tiga tahun tanpa komen.

Di akhir kes pembelaan, mahkamah mendapati tertuduh gagal menimbulkan keraguan yang munasabah terhadap kes pendakwaan terhadap pertuduhan pertama dan juga terhadap pertuduhan kedua E mengenai butiran yang dinyatakan dalam (b) pertuduhan itu dan kerana itu, mahkamah mendapati tertuduh bersalah dan menyabitkan kesalahannya ke atas kedua-dua pertuduhan itu.

Hukuman

F Hukuman bagi kesalahan pertama ialah penjara tidak melebihi tiga tahun atau denda tidak melebihi RM20,000 atau kedua-duanya dan bagi kesalahan kedua ialah denda tidak melebihi RM5,000 atau penjara tidak melebihi tiga tahun atau kedua-duanya dan bagi kesalahan yang kemudian, penjara tidak melebihi lima tahun.

G Undang-undang menetapkan hukuman maksima bagi setiap kesalahan dan menyerahkan kepada mahkamah untuk menentukan hukuman yang adil. Hukuman maksima adalah bagi perlakuan kesalahan yang terlalu ganas atau dahsyat dan mahkamah bolehlah mengurangkan tahap hukuman itu menurut tahap perlakuan kesalahan itu. Mahkamah hendaklah, mengikut H yang dulu didulukan, menimbang kepentingan awam dan kepentingan pesalah. Dalam kes ini, pesalah ialah ahli politik sepenuh masa dari parti pembangkang yang berpengalaman, berpengaruh dan menurut mata yang memandang berjasa juga kepada negara. Pada usia 36 tahun, beliau telah menempah kedudukan politik yang terjamin dan masa depan yang cerah dalam kerjayanya. Pesalah melakukan kesalahan ini selaras dengan I perjuangan falsafah politiknya termasuk membela gadis itu dari terhina dan teraniaya dan mendesak supaya Tan Sri Rahim dihadapkan ke mahkamah dan bukan dilindungi dan diselindungi. Pesalah berkata dia tidak berniat menghasut terhadap mahkamah. Ini kesalahan pertama dan walaupun pernah ditahan di bawah Akta Keselamatan Dalam Negeri 1960

pesalah tidak menaruh dendam terhadap sesiapa. Pesalah terlanjur membidas mahkamah dan pentadbiran keadilan akibat keghairahannya mengutuk polis dan Peguam Negara. Hasutannya tidak mengakibatkan tunjuk perasaan atau apa jua bentuk bantahan terhadap mahkamah dan pentadbiran keadilan.

Institusi kehakiman hendaklah dipelihara dan terpelihara. Jangan sekali-kali integriti kehakiman disangkal oleh mana-mana pihak. Hilang kepercayaan terhadap kehakiman buruk padahnya kepada negara. Jika mahkamah dan Peguam Negara sepakat, alamat negara akan hura-hara. Maka, segala fitnah terhadap mahkamah dan pentadbiran keadilan apatah lagi menghasut hendaklah dibasmi di peringkat semaian dan hukuman ringan tidak menjurus ke arah itu. Hanya hukuman penjara layak bagi pesalah yang menghasut terhadap mahkamah dan pentadbiran keadilan.

Setelah mahkamah menimbangkan perkara di atas dan keseluruhan kes ini, mahkamah tidak mengenakan hukuman penjara terhadap pesalah, memadai pesalah dihukum denda RM10,000 atau enam bulan penjara bagi kesalahan pertama dan RM5,000 atau tiga bulan penjara bagi kesalahan kedua. Mahkamah mengambilkira dengan hukuman itu pesalah hilang kelayakan untuk terus menjadi ahli Parlimen. Urusan itu adalah urusan pihak lain. Mahkamah ini menghukum pesalah kerana kesalahannya dan inilah asas pertimbangan hukuman, faktor lain adalah faktor sampingan. Mahkamah ini tidak mencari jalan keluar dengan mengenakan hukuman denda kurang dari RM2,000 semata-mata untuk mengelakkan pesalah dari hilang kelayakan menjadi ahli Parlimen dan mahkamah juga tidak dengan sengaja mengenakan hukuman denda RM2,000 semata-mata untuk menghilang kelayakannya. Pada pendapat mahkamah ini, hukuman penjara tidak kurang dari satu tahun atau denda tidak kurang dari RM2,000 dalam perkara 48 Perlembagaan Persekutuan hendaklah tidak menjadi pengukur apatah lagi menjadi penghalang bagi mahkamah mengenakan hukuman yang difikirkan patut dan sesuai bagi kesalahan di atas. Hukuman bagi sesuatu kesalahan adalah penentuan dan hilang kelayakan di bawah perkara 48 Perlembagaan Persekutuan adalah kesan akibatnya.

COURT OF APPEAL

1 April 1998

Gopal Sri Ram JCA (delivering judgment of the court):

Preliminary

These four appeals came before us on 1 April 1998. Two of them were by Lim Guan Eng whom we shall, throughout this judgment, refer to as 'the appellant'. The first of these was directed against the conviction and sentence on a charge under s 8A of the Printing Presses and Publications Act 1984 ('the PPPA'). The second was directed against the conviction and sentence upon a charge under s 4(1)(b) of the Sedition Act 1948. The other two appeals were by the Public Prosecutor who complained that the sentence passed upon the appellant in respect of each proved offence was inadequate. Although the appeals by the Public Prosecutor were lodged

earlier in point of time, we decided to hear the appellant's appeals first. Counsel for the appellant and the learned deputies who appeared for the respondent agreed to this course.

After carefully considering the arguments addressed to us, we dismissed the appellant's appeal against conviction and sentence, but allowed the respondent's cross-appeal. We set aside the sentence passed upon the appellant by the High Court on each charge. We then sentenced the appellant to 18 months' imprisonment on each charge with effect from 1 April 1998, and ordered that these sentences do run concurrently. The reasons for our decision are as follows.

Facts and background

The appellant is the Member of Parliament for Kota Melaka. He is a prominent political figure whose views command much influence over the Malaysian public. He is, and was at all material times, the Deputy Secretary-General of the Democratic Action Party ('DAP'), which is the political party that leads the opposition in Parliament. He is also the National Chairman of the DAP Youth. These are positions of some importance.

Tan Sri Rahim Tamby Chik ('Rahim') was the former Chief Minister of the state of Melaka. He was charged with certain offences, the particulars of which are irrelevant for present purposes. However, the Public Prosecutor, after a consideration of the material before him came to the conclusion that there was inadequate evidence to proceed with the case against Rahim. Accordingly, the charges against Rahim were withdrawn and he was acquitted of them.

The case against Rahim attracted much publicity in the print and the electronic media. Wide publicity was also given to the allegation that Rahim had had sexual relations with a girl below the age of 16 years. The truth of this allegation was never tested in a court of law. However, the Attorney General in his capacity of Public Prosecutor made a public statement to the effect that there was insufficient evidence to show that Rahim had committed any offence in relation to the girl in question.

Although the girl's name appears in the record of proceedings before us, we directed that it be not published. Henceforth, we will merely refer to her as 'the minor'.

The evidence available on record shows that the minor was at one point in time detained by the police. But she was not, according to her own evidence, placed in a lock-up. She was subsequently placed in protective custody pursuant to an interim order made by the magistrate's court under s 8(2) of the Women and Girls Protection Act 1973. There was then an attempt by her grandmother to have her set at liberty. However, the habeas corpus proceedings instituted for that purpose failed, the minor having filed an affidavit stating that she did not wish to be removed from the protective custody in which she had been placed. After the dismissal of the habeas corpus application, a final order was made under s 8(4) of the aforesaid Act. We may add that this final order was made at the instance of the minor.

The appellant was unhappy with these events. He asked questions about them in Parliament. He was given answers to these questions. But he was still dissatisfied.

On or about 15 January 1995, there was published at his instance, 5,000 copies of a pamphlet (exhs P11 and P11B) which gave intimation of a gathering at the Emperor Hotel in the City of Melaka to be held on 19 January 1995. It was headed 'ceramah kisah benar'.

One of the topics upon which speeches were to be made at the gathering in question was described by the pamphlet in the following words:

> The Tan Sri Rahim Tamby Chik sex scandal
> Wither justice and women's rights
> Victim imprisoned, criminal free.

The words 'Mangsa dipenjarakan' ('Victim imprisoned') are the subject matter of the first charge against the appellant which alleged that these words amounted to false news that had been maliciously published by the appellant contrary to s 8A(1) of the PPPA.

The gathering of which the pamphlet gave notice took place as scheduled. The appellant made a speech in which it is alleged that he said:

(1) that he was dissatisfied with the laws of Malaysia because of the double standard which resulted in the rape case involving Rahim not being brought to court and the Attorney General had stated that Rahim was not involved in a rape case involving the minor; and

(2) that he was dissatisfied with the fact that the court had ordered the minor to be detained for three years whereas Rahim, who should have been imprisoned for violating the law, was instead set free.

These two comments became the subject matter of the second charge against the appellant, the allegation being that he had committed sedition contrary to s 4(1)(b) of the Sedition Act 1948.

There were about 300 persons present at the gathering. A preponderance of them were of Malay community. Among those present were police officers assigned to monitor the gathering. They were PW2, 7, and 12. Encik Yew Kok Kee (PW14), the publicity secretary for the Melaka DAP and a member of the Melaka State Assembly was also present. It was this witness who had applied for and obtained a permit from the police to hold the gathering.

Later, a police report was lodged. Investigations commenced. At their conclusion, the appellant was charged with committing the offences of which we spoke of a moment ago.

After a trial lasting several days, Mohd Noor Abdullah J, in a reserved decision delivered on 28 April 1997, found the appellant guilty on the first charge and sentenced him to a fine of RM10,000, in default six months' imprisonment. On the second charge, the judge found the first comment not to have been proved. He, however, found that the appellant had committed an offence in respect of the second comment. He entered a

A conviction against the appellant upon the second charge and imposed a fine of RM5000, in default three months' imprisonment.

The appellant's appeals are directed at both convictions and the sentences passed upon him.

B *The grounds of appeal*

The appellant advanced several grounds of appeal before us. Some of these are common to both his appeals. Then there are the grounds that are specifically directed at each appeal. We will first address the common grounds.

C

First common ground: two judgments

It was argued by En Karpal Singh that the appellant's convictions on both charges ought to be set aside because the judge had produced two grounds of judgment. In order to appreciate the point made by counsel, it is D necessary to advert to the relevant part of the proceedings before the judge.

Final submissions at the end of the whole case were completed on 28 February 1997. The trial judge then reserved his decision to 28 April 1997 on which day he delivered a draft judgment in point form. The points he made appear sufficiently from the appeal record. After convicting E the appellant on both charges, the trial judge heard arguments in mitigation from the appellant and his counsel. He also heard arguments in reply from En Azahar Mohamed, the learned deputy public prosecutor who appeared at the trial and in these appeals. He then passed sentence. Thereafter, both the Public Prosecutor and the appellant lodged their respective notices of F appeal within the time prescribed by the Rules of the Court of Appeal 1994. In June 1997, the parties received the written grounds of the trial judge. It is dated 28 February 1997 and was included in the appeal record.

Encik Karpal Singh of counsel for the appellant, relying on the foregoing chronology, argued that when the trial judge delivered his draft judgment on 28 April 1997, there was already in existence a written judgment dated G 28 February 1997. Once the judge had delivered a draft judgment on 28 April 1997, it was not open to him to later issue the written judgment dated 28 February 1997. It follows that the written judgment dated 28 February 1997 could not be relied upon by anyone. The only judgment which this court is entitled to consider is the draft judgment delivered in H open court on 28 April 1997. That in essence is the submission of En Karpal Singh.

Counsel informed us that his efforts had not disclosed any reported case the facts of which are similar to the present instance. The only reported decisions concerned cases where a trial court had given a written I judgment and then attempted to supplement that judgment by means of a later judgment. In this context, we were referred to *Habee Bur Rahman v PP* [1971] 2 MLJ 194 and *Lorraine Phylis Cohen v PP* [1989] 2 MLJ 288. It is noteworthy that in the latter case, a formal application was made to expunge the offending supplementary grounds of judgment from the record.

There was, of course, no such application in the present appeal. Counsel nevertheless argued that this court ought to make a ruling as to which judgment should be relied upon for the purposes of this appeal because his grounds of complaint would very much depend upon such a ruling.

The learned deputy, En Azahar Mohamed, when responding to the arguments of En Karpal Singh, pointed out that the judgment dated 28 February 1997 could not have been in existence on that date because it adverts to matters that transpired after that date, in particular, the judge's consideration of the plea in mitigation by the appellant and his counsel which were only made on 28 April 1997. The learned deputy also clarified that no judgment in draft had been delivered on 28 April 1997. It was submitted on the respondent's behalf that the date appearing on the last page of the written judgment, namely 28 February 1997, is an obvious error. Our attention was also drawn to the grounds of appeal set out in the appellant's petition almost all of which directed criticism at the trial judge's conclusions appearing in the written judgment dated 28 February 1997. There was, Encik Azahar submitted, no injustice occasioned to the appellant by the error in the date appearing in the written judgment.

After considering all the arguments, including those advanced by En Karpal Singh in his reply to the learned deputy, we agreed with the submissions advanced on behalf of the Public Prosecutor. It is clear, as argued by En Azahar, that it would have been physically impossible for the written judgment to have been prepared on 28 February 1997 in the form in which it now appears. The learned judge had not on that date heard any of the arguments advanced before him on 28 April. Yet, most, if not all of what was said and happened on 28 April appears in the written judgment. It is therefore quite plain that the written judgment could not have been in existence on 28 February 1997. We therefore concluded that the only judgment that was to be considered in this appeal would be that erroneously dated 28 February 1997.

We were also inclined to amend the date appearing on the written judgment to 28 April 1997. Indeed, that was the order we first made at the conclusion of the arguments of the point taken by the appellant in the very first ground of his petition of appeal. However, after hearing further arguments from En Karpal Singh, we agreed with him that our order may give rise to further difficulty because it may be argued, having regard to what the judge described as his 'draft judgment', that there were two judgments, both dated 28 April 1997. We, therefore, at the suggestion of En Karpal Singh and with the agreement of the learned deputy, ruled that the judgment dated 28 February 1997 must have been written on some date after 28 April 1997.

Having regard to all the material available on record, we were satisfied that the date appearing on the written judgment was an obvious typographical error that occasioned no miscarriage of justice whatsoever. We are equally satisfied from a careful scrutiny of the record of appeal that nothing really turns upon the note made by the learned judge on 28 April 1997 which refers to a 'deraf keputusan' (literally meaning 'draft decision'). What he was obviously referring to were the points he jotted down when delivering his oral reasons for finding the appellant guilty. These do not, in

our opinion, amount to a judgment in the sense in which it is used by the Courts of Judicature Act 1964, the Criminal Procedure Code (FMS Cap 6) and the Rules of the Court of Appeal 1994 which primarily govern adjectival criminal law. The judgment of the trial judge in this case was, without doubt, the full written reasons he furnished to the parties after notices of appeal had been lodged and which was erroneously dated 28 February 1997.

A perusal of the appellant's petition of appeal reveals that he had taken every point of criticism that was available to him against the reasoning expressed in the written judgment. We are, therefore, of the view that no prejudice whatsoever has been visited upon the appellant by reason of the matters complained of by him in this regard and that the convictions entered against him have in no way been vitiated by the error in the date appearing on the written judgment.

That said, we would express the view that great care must be taken by trial judges to accurately date their judgments to ensure that no confusion arises. Once properly dated, their judgments will render unnecessary, such arguments as those raised before us in the instant case. The trial judge in the present case unfortunately did not take sufficient care in ensuring that his written judgment bore the date on which it came into existence. We would also advise trial judges to avoid recording reasons, even in point form, for any oral judgment they may give at the conclusion of the case before them. Suffice that they pronounce the orders they propose to make. Once there is an appeal, the grounds of judgment may be prepared and furnished. While there is absolutely nothing wrong in recording short notes when delivering oral judgment as was done in the present instance, we find that it often provides room for the argument that prejudice has been occasioned because there are two judgments.

Second common ground: criticism of counsel

Encik Karpal Singh has also argued that the appellant's trial has been vitiated by reason of certain criticism levelled against him by the trial judge in the written grounds of judgment. The matter arose in this way.

On the first day of the appellant's trial, the court convened at 9am. When the trial judge mounted the bench, only those having conduct of the prosecution were present. A most reasonable suggestion by the learned deputy that the court adjourns to await the arrival of opposing counsel was, for some unknown reason, not acceded to by the trial judge. Then, at about 9.08am, the appellant arrived with En Amardas, one of En Karpal Singh's juniors in the case. The judge then proceeded to hear argument relating to the joint trial of the two charges against the appellant. At about 9.22am, En Karpal Singh arrived. What happened thereafter is not fully reflected in the notes taken by the trial judge. But it is common ground that an exchange did take place between En Karpal Singh and the judge which included an apology by counsel for his tardiness, a remark by the judge about the punctuality with which he sat, a response by counsel that even judges do not always sit on time and that he would not be cowed by the court. This last remark does not, however, appear in the judge's note. After this brief distraction, the trial appears to have proceeded smoothly to

its conclusion with no further reference to the exchange between counsel and the court. If matters had rested there, as they indeed ought to have, this court need not have been troubled by the present complaint. But they did not.

When the learned trial judge came to write his judgment, he adverted to the incident. He made certain adverse remarks about the conduct of En Karpal Singh in relation to the exchange that had taken place. In particular, he referred to the remark by counsel that he would not be cowed by the court. This is surprising because there was never at any time an indication from the trial judge that he did not intend to let the matter rest. On the other hand, the way in which the trial proceeded appears to indicate that the unfortunate episode was over and long forgotten. In these circumstances, it was wrong for the trial judge to have borne the matter in mind and dealt with it in the way in which he did in his written judgment.

Before us, En Karpal Singh argued that the criticism of him by the learned judge was not only unwarranted but had also vitiated the trial because the judge had acted without jurisdiction. While we agree that the criticism of counsel by the judge was certainly unnecessary and unwarranted, we are unable to accede to the submission of En Karpal Singh that it had the effect he says it did. Clearly, the comments made by the judge against counsel ought to be expunged from the record as lacking any proper basis. However, it has in no way affected the propriety of the trial.

We would add that on occasions such as the present we can do no better than to recall to mind the following observation of Sharma J in *Loo Pang v Ng Chye* [1974] 2 MLJ 193 at p 194:

> I need only add that a reasonable and workable amount of harmony and goodwill, if not a complete accord and adjustment, ought to prevail between the Bench and the Bar and the mere fact that a presiding officer of the court whether he be a judge or a magistrate sits a few feet higher than the floor from which the counsel addresses him should make no difference in the attitude, duties and status of the two. Both of them are part of the same machinery of justice. Both of them are essentially men of law and presumably of honour, no doubt performing different functions but those functions are aimed at one and the same end and that is the administration of justice with dignity, courtesy and honour and these qualities should be seen and reflected in their respective conduct and behaviour. The Bench and the Bar both serve the public and the law which the public is expected to respect and honour. Those connected with the administration of law and justice should be so worthy as to command that respect and honour.

So much for the grounds of appeal that are common to the appellant's appeals. We now turn to address the complaints made in respect of each appeal.

The first appeal

Section 8A of the PPPA with which the first appeal is concerned reads as follows:

A (1) Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

(2) For the purposes of this section, malice shall be presumed in default of B evidence showing that, prior to publication, the accused took reasonable measures to verify the truth of the news.

(3) No prosecution for an offence under this section shall be initiated without the consent in writing of the Public Prosecutor.

To establish a case under the foregoing provision the prosecution must C establish: (i) that there was a publication of news; and (ii) that the news so published was false, in the sense that it was factually untrue. Upon proof of these two ingredients, the existence of the third ingredient, viz (iii) that there was malice, is to be presumed to exist in the absence of evidence that the person accused of the offence took reasonable measures to verify the D truth of the news. Encik Karpal Singh has no quarrel about the first ingredient. He agrees that there was publication. But he argues that the prosecution had, at the trial, hopelessly failed to prove the second. In other words, it had not been proved beyond a reasonable doubt at the close of the case for the prosecution that the words 'Mangsa dipenjarakan' or 'Victim imprisoned' were false. It was further submitted that the trial E judge had not construed the words complained of in the context in which they had been used. Counsel says that when the offending pamphlet is read as a whole it is clear that the appellant could not possibly have meant that the minor had been incarcerated in a prison. After all, the minor had been placed in police detention prior to the making of the protective custody order. Therefore, the words 'Mangsa dipenjarakan' could be F adequately construed to refer to the period when she (the minor) was under police detention. Encik Karpal Singh also complained that the trial judge had paid mere lip service to the test that fell to be applied in the proof of the second ingredient. There was, according to counsel, no proper appreciation by the judge of the majority judgments of the Federal Court G in *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 and the earlier decision of the apex court in *Khoo Hi Chiang v PP* [1994] 1 MLJ 265 which call for a maximum evaluation of the evidence led by the prosecution when determining whether the appellant had a case to answer. So much for the submissions advanced on the appellant's behalf.

H In answer to these arguments, En Yusof Hj Zainal Abidin, deputy public prosecutor, submitted that there had been no misdirection by the learned judge upon the proof of the second ingredient. He referred us to passages in the judgment which clearly show that the trial judge had not looked at the words complained of in isolation but contextually, having regard to the offending pamphlet as a whole. The learned deputy also drew I our attention to that part of the judgment where the trial judge dealt with the standard of proof, in particular with reference to the decision in *Arulpragasan*. It was also submitted that so much of the prosecution's evidence that related to the first charge when read as a whole established

the fact that the words complained of were false. The learned deputy further submitted that the prosecution had, both at the close of its case and at the end of the whole case, established all the ingredients required to bring home guilt on the first charge.

After considering the arguments addressed to us, we found no merit in the submissions advanced on the appellant's behalf in support of the first appeal. It is clear from a reading of the judgment under appeal that the trial judge approached the words complained of in their proper context. He was careful in ensuring that the prosecution met the legal standard of proof. He analysed the evidence led in support of the first charge with care. He found that the words complained of were untrue because the minor had never been imprisoned. With these conclusions we are in agreement.

It must not be forgotten that the offending pamphlet was directed at all and sundry. In our judgment, the test that is to be applied in a case under s 8A(1) of the PPPA is that of the ordinary man on the street. He is not one who habitually carries with him leading dictionaries of the Malay or the English language. He does not examine the words addressed to him by referring to such works. He is not a lawyer who is possessed of knowledge of technical terms. He is one who accepts them in the sense in which they are ordinarily used. He has no specialized knowledge upon the subject to which the words relate. He has in his possession only such general information as is available to all and sundry. The question then to be asked is: what would the words 'Mangsa dipenjarakan' convey to such a man in their ordinary sense?

Adopting the approach that has commended itself to us, we are satisfied that, having regard to all the relevant circumstances of the case, including the context of their use, the words 'Mangsa dipenjarakan' convey the meaning that the minor had been imprisoned despite her innocence. It is clear from the evidence of the prosecution that the minor had never been imprisoned and that even during her detention by the police, she was not kept in a lock-up. Indeed, the evidence of the appellant given while making his defence to the charge has, instead of raising a reasonable doubt, further strengthened the prosecution's case. For, the appellant, during his testimony, said that he was referring to the police detention of the minor, but not to the period of three years specified by the order of protective custody made by the magistrate. It follows, with respect, that the suggestion made by counsel for the appellant that the words complained of could be held not to be false by reason of the fact that the minor had for a time been detained by the police is without merit.

So far as the third ingredient is concerned, no evidence was led by the appellant at the trial to show that he took reasonable measures to verify the truth of the words complained of. On the other hand, the evidence on the first charge shows that the appellant, on the basis of the information in his possession, knew that the words complained of were false. Further, the facts established at the trial show that it was the appellant's intention to convey false impression to the ordinary man on the street that the minor, though innocent, had been sent to prison. We are, therefore, satisfied that the totality of the evidence available on record supports the irresistible

A inference that the appellant was actuated by actual malice in publishing the words 'Mangsa dipenjarakan'.

To sum-up, we find ourselves in agreement with the approach adopted by the trial judge and with his conclusions in respect of the first charge. We are unable to find any misdirection by the judge of himself upon the law
B or the evidence. It is, therefore, our judgment that the first appeal, which relates to the conviction upon the first charge is without merit.

The second appeal

The second appeal is, as we earlier observed, directed at the appellant's
C conviction upon the charge of sedition under s 4(1) of the Sedition Act 1948, the material portion of which, for present purposes, provides that: 'Any person who — (b) utters any seditious words; (c) prints, publishes ... any seditious publication ... shall be guilty of an offence ...'.

Section 2 of the Sedition Act 1948 defines seditious words when
D applied to or used in respect of any act, speech, words, publication as one having a seditious tendency. And s 3(1) for present purposes reads: 'A "seditious tendency" is a tendency ... (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State'.

E Encik Karpal Singh did not, during his address to us in support of the second appeal, submit that the words set out in para (b) of the second charge, if proved, were not seditious. His arguments were confined to the proof of the words allegedly uttered by the appellant at the meeting of 19 January 1995. There was accordingly no response from the learned deputy upon the question whether the words complained of, if uttered,
F were seditious. We are, therefore, spared the task of deciding the point since the issue was never raised before us. In any event, the law upon the subject has been authoritatively stated by Raja Azlan Shah J (as he then was) in *PP v Ooi Kee Saik & Ors* [1971] 2 MLJ 108 and by Mohd Azmi J (as he then was) in *PP v Mark Koding* [1983] 1 MLJ 111. We find that
G there is no further learning that may be usefully added to what their Lordships said in those cases.

It is the submission of counsel that the words attributed to the appellant in the second paragraph of the sedition charge were not proved in accordance with the *Arulpragasan* test. As earlier observed, the trial judge found that the prosecution had failed to establish that the appellant had uttered words
H to the effect set out in the first paragraph of the second charge. There is no cross-appeal by the Public Prosecutor against this finding by the judge. However, we find it necessary to express our views upon this aspect of the case by reason of certain comments made by the trial judge in his judgment which are certainly open to the interpretation that even if the words set out
I in the first paragraph of the second charge had been proved to have been uttered by the appellant, no offence under s 4(1)(b) of the Sedition Act 1948 would be established. We must enter our vigorous dissent against that proposition.

In our judgment, if the words set out in the first paragraph of the second charge had been proved to have been uttered by the appellant, a case of sedition in respect of them would certainly have been established. This is because the words in question have the effect of bringing the administration of justice into hatred and contempt. It would be quite wrong to assume that the administration of justice is confined to matters actually pending before a court of law. It includes steps that are necessarily antecedent to, and fairly connected with, the invoking of the court's process. To quote from the speech of Lord Diplock in *Attorney General v Times Newspapers Ltd* [1974] AC 273 at p 309:

> The due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law.

Thus, the public pillorying of the Attorney General for exercising any of his powers under art 145(1) of the Federal Constitution in one way rather than another would fall squarely within the purview of s 3(1)(c) of the Sedition Act 1948. To allege double standards against the Public Prosecutor in deciding which cases ought to be brought before the courts (which is the thrust of the words in the first paragraph of the second charge) amounts to denigrating and undermining the administration of criminal justice.

With that, we return to the primary submission of En Karpal Singh directed at the proof of the offence which forms the subject matter of the second charge.

Counsel argued that the learned judge was wrong in holding that the prosecution had proved its case against the appellant because: (i) there was no corroboration of the evidence of PW2; (ii) there was material conflict between the evidence of PW2 and PW14 as to what the appellant is alleged to have said at the meeting of 19 January 1995; and (iii) PW2, 7 and 12 were unreliable, their evidence having been rejected by the judge in respect of the first paragraph of the first charge. These points bring into focus the question whether there had been judicial appreciation of the evidence presented by the prosecution. We will deal with each of them in turn.

Appreciation of evidence — the corroboration point

The gist of PW2's evidence is that he attended the meeting in question and made a contemporary note of the proceedings at the meeting, including the appellant's speech. On returning to his office, PW2 typed out the notes he had taken. PW2 then destroyed the original note he had taken contemporaneously at the meeting. The typed document was put in and

A marked as exh P6. The portion relating to the appellant's speech was marked as exh P6A. PW7 and PW12 who had accompanied PW2 to the meeting essentially confirmed the material points in the speech made by the appellant set out in exh P6A. Encik Karpal Singh argued that in the absence of a tape recording, the evidence of PW2 ought not to have been accepted by the trial judge, particularly when that witness' account of what B the appellant said was taken down in third person speech. Counsel very properly drew our attention to s 6(1) of the Sedition Act 1948 which prohibits the conviction of any person for an offence under s 4 on the uncorroborated evidence of one witness. He submitted that the evidence relied upon by the trial judge as corroborating the testimony of PW2 was C not true corroboration in law. The argument of counsel raises an important question that calls for some discussion.

So far as the law governing corroboration is concerned, we accept the following propositions to be well settled and beyond controversy:

(1) As a general rule, the conviction of an accused may proceed upon the D uncorroborated evidence of one witness.

(2) There are cases where either common law — as a matter of practice which has, through passage of time, acquired the force of law — or statute, creates an exception to the general rule in respect of certain categories of witnesses by calling for, or indeed demanding, that their E evidence may not to be acted upon in the absence of independent corroboration. Accomplices illustrate the common law exception, while s 6(1) illustrates the statutory exception.

(3) Evidence that requires corroboration, whether as a matter of practice having the force of law or by direction of statute:

F (a) must first be capable of belief before any question of corroboration may arise, for evidence that falls of its own inanition cannot be saved by the presence of abundant corroboration;

(b) cannot corroborate itself, for tainted evidence does not remove its taint by repetition, notwithstanding s 157 of the Evidence G Act 1950; and

(c) cannot be corroborated by evidence that itself requires corroboration.

(4) To constitute true corroboration in the eyes of the law, the H corroborative evidence must:

(a) be capable of belief;

(b) be independent in the sense mentioned in proposition (3)(c) above;

(c) be in respect of the fact or facts that lie at the axis of the dispute, that is to say, upon the fact in issue and not upon some I collateral matter or upon a fact in respect of which there is no quarrel. In other words, it must be corroboration upon a material particular but need not be identically repetitive of the evidence that requires corroboration.

(5) At common law, a trial court is entitled to act upon uncorroborated evidence which in itself requires corroboration provided that it warns itself of the danger of so acting. The warning must not amount to mere lip-service. Good reasons must be furnished for departing from the accepted rule. Departure from the normal rule may be justified where the evidence requiring corroboration emanates from a witness who is a person of high character and the offence is one that does not carry with it any serious moral stigma.

The authorities that support these propositions are legion and include *R v Baskerville* [1916] 2 KB 658, *Chao Chong v PP* [1960] MLJ 238, *Teng Ser Siong v PP* [1963] MLJ 265, *TN Nathan v PP* [1978] 1 MLJ 134, *Jegathesan v PP* [1980] 1 MLJ 165, *Dowse v Attorney General, Federation of Malaya* [1961] MLJ 249, *Bhuboni Sadhu v King Emperor* AIR 1949 PC 257, *Mohamed Ali v PP* [1962] MLJ 230, *Yap Ee Kong & Anor v PP* [1981] 1 MLJ 144, *PP v Paneerselvan & Ors* [1991] 1 MLJ 106 and more recently *PP v Thavananthan* [1994] 2 MLJ 436.

In the present case, the trial judge held that the evidence of PW7 and 12 sufficiently satisfied the test laid down in *R v Baskerville*, a case that has been repeatedly applied by our courts. This is our case as concerned the publication of the offending pamphlet and the convening of the meeting on 19 January 1995.

Under cross-examination, this witness confirmed that he had been present at the gathering. He was referred to the two paragraphs in the second charge and asked if the appellant had spoken the offending words therein alleged. He said that the appellant had not.

Based on the evidence of PW14 under cross-examination, En Karpal Singh submitted that there was a serious conflict between the prosecution's own witnesses as to whether the appellant had uttered the offending words. On the one hand, there was the evidence of PW2, 7 and 12, all of whom testified in support of the second charge. On the other hand, there was the evidence of PW14 who directly contradicted them. The prosecution could not disavow the evidence of PW14 given under cross-examination. He was their witness and they were bound by his testimony, including that given under cross-examination. Additionally, the learned judge had not accepted the prosecution's evidence led in support of the first paragraph of the second charge. In this state of affairs, it could not be said that the prosecution had met the standard of proof laid down by the Federal Court in *Arulpragasan*. So much for the arguments advanced on the appellant's behalf.

The submissions of counsel for the appellant once again raise the issue of appreciation of evidence, albeit from a different perspective. At hand, therefore, is the question whether the learned trial judge acted in accordance with the principles governing the judicial appreciation of evidence adduced before a court. If, as argued by counsel, the trial judge had failed to apply well established principles for the evaluation of evidence, such failure would constitute a misdirection warranting appellate intervention. See *Syed Abu Bakar bin Ahmad v PP* [1984] 2 MLJ 19.

A Now, among the general rules that govern judicial appreciation of evidence in both civil and criminal causes in the adversarial system of justice, there is one of fundamental importance. It is that a party is bound by the evidence of witnesses whom he calls in proof of his case. The rule is enforced with full rigour in civil cases. See *M Ratnavale v S Lourdenadin* [1988] 2 MLJ 371.

B However, the law, recognizing that much depends upon the human factor and vagaries of life, refuses to lay down any absolute rule in the matter of evidence evaluation. Witnesses are but human. Testimony may often be coloured by emotion, benign or malice. Not all witnesses speak the whole truth, despite the oath or affirmation administered to them. Not C all witnesses are devoid of bias of one sort or another. Recollection of events is seldom, if ever, perfect. Two or more persons witnessing the same incident may give varying, yet truthful, accounts of it according to their perception. There are so many other imponderables. The law would fail to meet the needs of society whose affairs it regulates if it does not take D into account the incalculable variables that enter upon the scene when questions of appreciation of evidence arise.

In no case is this especially true as in the trial of criminal cases where the Public Prosecutor initiates the court's process in the public interest. The Public Prosecutor is often compelled to call witnesses to formally establish facts that are necessary for the unfolding of the story that lies at E the heart of his case. Some of these witnesses may, by reason of close relationship or loyalty, exhibit a natural bias in favour of the accused. They may, out of eagerness to help the accused, furnish answers under cross-examination that are favourable to the defence and stretch the truth to the point of incredulity. If the general rule is applied with unbending strictness F in such cases, substantial justice will not be achieved. The approach that is to be adopted by a trial court in such cases appears in the judgment of Wan Yahya J (as he then was) in *Haji Abdul Ghani bin Ishak & Anor v PP* [1981] 2 MLJ 230. His Lordship there said (at pp 232, 233):

> It was submitted by Mr Edgar Joseph Jr, counsel for the first accused, that G his client had not been proved to have had any interest in the application; that the only direct evidence on this had come from Kipah and that she had stated in evidence that she was making the application at the behest of her uncle, the second accused. Counsel further submitted that as she was a witness called by the prosecution, this court should not reject her evidence. He stressed that the prosecution could not blow hot and cold at the same H time and that the whole of her evidence had to be accepted in toto. Counsel referred to the Indian case of *Abinash Chandra v Emperor* (1936) 37 Cr LJ 439 and, in particular, to p 442, which reads as follows:
>
> > 'The Crown has suggested, though not in so many words, that we ought to look with suspicion upon the evidence of these witnesses because they belonged to a faction in the company which was not I favourably disposed towards NC Chouduri. A more unusual and a more impossible suggestion, I have never heard advanced. They are witnesses produced by the Crown, and put forward as witnesses of truth in support of the case for the prosecution. It has not been suggested that they turned hostile, nor during the whole trial were they

> treated as hostile witnesses, nor has anyone openly suggested that they were not truthful witnesses. The prosecution cannot be permitted to blow hot and cold as best to suit them. If these were not truthful witnesses, they ought never to have been called by the prosecution and so recommended to the court as witnesses of truth.'
>
> This apparently stringent decision is not without qualification. One only has to read part of the following sentence which reads: 'There is no reason whatever for preferring the evidence of NC Chouduri to theirs ...' — to understand that in the above-quoted passage, the learned judge was referring to the rule against rejection of prosecution witnesses' evidence when there is nothing to suggest contra preference against his evidence. Our present case is somewhat different. The witness Kipah is the wife of the first accused and she had to be called by the prosecution to fill up the chain of events in that case. Answers elicited from her cross-examination by the defence has to be scrutinized with some care. As a wife testifying in a serious case against her husband, she could not be expected to be entirely immune from being unbiased, or in any event, uninterested. Moreover, when there are other evidences to the contrary, this court is not bound to accept each and every word in her evidence. If what was suggested is to be followed in the unqualified form, the function of a trial judge or jury will become obsolete and such function could be better decided by computer. There is nothing to deter the trial judge or jury picking or choosing any piece of evidence from a witness while rejecting others which he or they felt not credible enough. After all, a witness is capable of saying both truths and untruths. If, for any good reason, the court feels that part of his evidence should be preferred to the other, then it is at liberty to accept that part and reject the others. Indeed this has to be so when dealing with human as opposed to mechanical factors. That is partly why we are here to adjudge a case.

It is noteworthy that when the case went on appeal, the former Federal Court — unusually strong upon that occasion (Raja Azlan Shah CJ (Malaya), Abdul Hamid FJ and Hashim Yeop A Sani J) — made no adverse comment on the methodology of evidence evaluation adopted by Wan Yahya J in the passage quoted above.

In our judgment, the view expressed by Wan Yahya J in *Haji Abdul Ghani bin Ishak & Anor v PP* provides a complete answer to En Karpal Singh's submission on the point under discussion. The trial judge in the present case before us adopted a similar approach when evaluating the evidence of PW14. He took into account all relevant considerations, including this witness' bias in the appellant's favour, when deciding to reject the answers given under cross-examination. We are unable to discern any error in the trial judge's approach to the evidence led in proof of the second charge. In our judgment, there was judicial appreciation by the trial judge of the evidence led in support of the second charge. The submission on the contradiction point therefore fails.

Reliability of prosecution evidence

When considering the first paragraph of the second charge, the learned judge concluded, after taking into account the appellant's evidence given in his defence, that the relevant prosecution witnesses may have been

A confused about what the appellant had said at the meeting in question. He then held that a case of sedition had not been made out in respect of the first paragraph of the second charge.

Encik Karpal Singh argued that once the judge found it unsafe to act upon the evidence of material witnesses for the prosecution in respect of B the first paragraph of the second charge, the very same evidence became unreliable in respect of the second paragraph as well. He submitted that the judge was therefore wrong in acting upon the evidence of these witnesses with regard to the second paragraph.

In our judgment, these arguments are squarely met by the following C observation of Raja Azlan Shah FJ (as he then was) in *PP v Datuk Haji Harun bin Hj Idris* [1977] 1 MLJ 15 at p 19:

> There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinize each evidence very carefully D as this involves the question of weight to be given to certain evidence in particular circumstances.

Further, in a case where it is alleged that a speech was made containing two or more passages that are seditious, it is fairly open to a trial court to order an acquittal in respect of one passage and yet enter a conviction in E respect of the other. Indeed, this is what happened in *PP v Mark Koding*, a decision with which we are in complete agreement.

In the present case, the learned trial judge carefully scrutinized the evidence of PW2, 7 and 12 before deciding to act upon it. We are unable to detect any error in the reasoning of the judge when he came to evaluate F the credibility of the prosecution witnesses. We would, therefore, reject the submissions of En Karpal Singh on this point.

Consideration of the defence

Counsel for the appellant argued that when the trial judge came to consider G the defence, he misdirected himself upon the burden of proof that lay on the appellant. Our attention was drawn to passages in the judgment where the trial judge had said that the appellant had failed to raise a reasonable doubt as to the truth of the prosecution's case. Encik Karpal Singh submitted that the trial judge ought to have gone further.

H With respect, we are unable to agree with this line of argument. In accordance with well-established authority, the trial judge asked himself the right question, namely, whether the appellant had succeeded in casting a reasonable doubt as to the truth of the prosecution's case. This is not a case where the judge had said that he did not believe the appellant and his witnesses. Had he done so, he would been under a further duty to ask I himself, whether despite the absence of belief, the appellant had raised a reasonable doubt upon the truth of the prosecution case. In the present instance, the learned judge proceeded directly to ask himself the question: has the appellant raised a reasonable doubt as to the truth of the prosecution case? In this, the judge was entirely correct.

Appeals against convictions — a summary

For the reasons given, we are of the view that the appellant's appeals against the convictions entered against him upon the first and second charges are without merit. To sum up, the trial judge was entirely correct in holding that the ingredients of each offence had been proved beyond a reasonable doubt. He asked himself the right questions, directed himself properly on the relevant law and adopted the correct approach in the matter of evidence evaluation. The appeal against conviction upon the first charge is dismissed. So is the appeal against the second charge.

Sentence — appeal and cross-appeal

(a) The approach

Encik Karpal Singh submitted that the sentence passed upon the appellant in respect of each charge is manifestly excessive. He complained that the learned judge had failed to take into account relevant considerations when passing the sentences in question. According to counsel, the authorities reveal a trend on the part of the courts not to impose a sentence that would disqualify a Member of Parliament from membership of the Dewan Rakyat. The trial judge did not, En Karpal Singh argues, address his mind to this important consideration. In support of his submission, counsel relied on the decisions in two cases. The first is the decision of the former Federal Court in *Lim Kit Siang v PP* [1980] 1 MLJ 293. The second is *PP v Mark Koding* [1983] 1 MLJ 111.

Lim Kit Siang concerned a Member of Parliament who was convicted on five charges under the Official Secrets Act 1972. The High Court fined the appellant RM5,000, in default one year's imprisonment on the first charge, RM1,000, in default two months' imprisonment on the second charge and RM3,000 each on the third, fourth and fifth charges. The accused appealed against conviction and sentence. The Public Prosecutor cross-appealed against inadequacy of sentence. The Federal Court dismissed the appeal against conviction. It also dismissed the cross-appeal. However, it allowed the accused's appeal against sentence in respect of the first, third, fourth and fifth charges. It reduced the fine on the first charge to RM1,500 and on the third, fourth and fifth charges to RM1,000. The very special circumstances that moved the Federal Court to intervene in the matter of punishment in that instance are to be found in the following passage in the judgment of Raja Azlan Shah CJ (Malaya) (as he then was) at p 298 of the report:

> We do not hide from ourselves the fact that the details of the fire control system and of the engines installed in and the capability of the craft are of possible utility to an enemy which seeks to destroy our naval defence and if such information had tended to endanger or had the effect of imperilling the security of the country, we would have interfered by substituting a sentence of imprisonment for any fine that might have been imposed. But one has to be realistic and see the case in its correct perspective and in the context of prevailing conditions. We could not but wonder whether the details provided

A in calling for tenders for the guns, missiles and launchers, available to anyone who applied for a tender form, had not largely removed the veil of secrecy from the ships' armaments. Also no one has suggested in any way that the information in the charges was useful to such enemies as this country has at the moment or in the foreseeable future. Neither has anyone submitted that the real intention or the effect of such revelation was to B benefit the enemy or endanger the security of the country. This is particularly true of the disclosure of the tender exercise and the financial provisions of the final contract.

Mark Koding also concerned a Member of Parliament who was convicted of an offence under s 4(1)(b) of the Sedition Act 1948. He was bound over C for good behaviour. The circumstances warranting the sentence passed in that case appear in the following passage of the judgment of Mohd Azmi J at p 117 of the report:

On sentence, I have given anxious consideration to the various extenuating circumstances found in this case. Although sedition is a serious offence, I take into consideration that the accused is a first offender, and the type of D sedition committed is a technical one under para (f) of s 3(1). Further, there are extenuating circumstances in this case which are in accused's favour. Although the accused is a lawyer and a Member of Parliament who should be presumed to know the law, it is clear from the Malaysian Hansards that when the accused made the impugned speech even the Speaker, from his interjection when Mr Pathmanaban took objection, was understandably E unsure whether to stop or allow the accused to continue with his speech. The law of sedition in this country is difficult to understand due to its artificial nature, and until recently even a Member of Parliament could not be expected to know why his freedom of speech has been validly limited although ss 3 and 8 of the Houses of Parliament (Privileges and Powers) Ordinance 1952 have not been expressly repealed. Secondly, this offence F was committed in 1978 and the accused was only charged in 1981 after the deputy public prosecutor had given his consent to prosecute some two years and nine months after a police report was lodged by the complainant. Thirdly, this is the first case in this country that a Member of Parliament has been charged of committing the offence while discharging his duty in Parliament. Fourthly, the impugned speech was accused's maiden speech in G Parliament. In my view, the fact that the accused has been found guilty in this case, is sufficient deterrent for him and other Members of Parliament to be more careful in future when giving speeches in Parliament, particularly when dealing with sensitive issues. To my mind, public interest would be sufficiently served if the accused is put on a bond for two years in the sum of RM2,000 in one surety to be of good behaviour under s 173A Criminal H Procedure Code without recording a conviction. I therefore impose the sentence which I think is fair and adequate having regard to all the circumstances of the case. *However, this sentence should not form a precedent for future cases involving Members of Parliament who are found guilty of similar offences.* (Emphasis added.)

I With respect, the cases relied upon by counsel do not constitute a trend of authority in support of a judicial policy on sentencing in favour of Members of Parliament, whether they occupy government or opposition benches in the Dewan Rakyat. They are nothing more than decisions upon their peculiar facts. In our judgment, the status of Members of Parliament is in

itself of no consequence to set that class of persons apart from ordinary citizens in the matter of sentencing. If a serious offence is committed by a Member of Parliament, then it is the plain duty of a court to impose such punishment as reflects the gravity of the matter. Any other approach would fetter the discretion vested in a court to impose a sentence appropriate to the facts and circumstances of a particular case.

The principles governing sentencing have been stated on numerous occasions and we think no assistance is to be had by going through all the authorities on the subject. Suffice to say that a court should, when sentencing an accused, take into account all considerations relevant to the case, including the gravity of the offence, the circumstances surrounding the commission of the offence, the antecedents of the accused, the deterrent effect that punishment is to have, any factor that warrants special attention either in favour or against the accused and above all the public interest. Reasons must be given for imposing a particular sentence to enable an appellate court to ensure that there has been no error in principle.

In *PP v Loo Choon Fatt* [1976] 2 MLJ 256 at p 257, Hashim Yeop A Sani J (later CJ (Malaya)) admirably expressed the correct psychological approach to sentencing as follows:

> Presidents and magistrates are often inclined quite naturally to be over-sympathetic to the accused. This is a normal psychological reaction to the situation in which the lonely accused is seen facing an array of witnesses with authority. The mitigation submitted by a convicted person will also normally bring up problems of family hardship and the other usual problems of living. In such a situation, the courts might perhaps find it difficult to decide as to what sentence should be imposed so that the convicted person may not be further burdened with additional hardship. *This in my view is a wrong approach.* The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused. Lord Goddard LCJ in *R v Grondkowski* [1946] 1 All ER 560 at p 561 offered some good advice when he said:
>
> > 'The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interests of the prisoners.'
>
> (Emphasis added.)

It is with the foregoing matters in mind that we approach the appeals and cross-appeals on sentence.

(b) The first charge

To recall, the appellant was sentenced to a fine of RM10,000, in default six months' imprisonment on the first charge. The learned judge, however, did not give any reasons for imposing this punishment.

It is the appellant's contention that this sentence is excessive. His counsel has said that the fine should be reduced to prevent disqualification of his client from membership of the Dewan Rakyat. On the other hand, En Yusof Zainal Abidin, the deputy who argued the cross-appeal in respect of the first charge submitted that the sentence passed is grossly

A inadequate. He has submitted that the appellant ought to have received a custodial sentence instead of a fine.

Now, a person convicted of an offence under s 8A of the PPPA is, according to that provision, liable to imprisonment for a term not exceeding three years or to a fine not exceeding RM20,000 or to both such B imprisonment and fine. The section is constructed so as to place imprisonment as the first option of punishment for an offender. This clearly reflects the gravity of the offence created by the section.

Parliament's aim in enacting the provision was obviously to ensure truth in publication of news and providing severe penal consequences for those who publish false news maliciously. It is a serious thing in itself to C publish false news. The seriousness of the matter is compounded when the publication is malicious. Those possessed with the power to influence public opinion bear a heavy responsibility to ensure that they do not mislead the general public because of the grave consequences that may ensue by reason of what they publish. The malicious publication of false D news by people who wield considerable influence over public opinion can destroy the equilibrium of society and cause untold harm and injury to the peace and security of this country. In these circumstances, it is the plain duty of the courts to impose a sentence that brings home the seriousness with which the law views such criminal conduct.

E Accordingly, we are of opinion that there is no merit in the appellant's complaint that the sentence passed on him is excessive. However, we are in entire agreement with the submission of En Yusof, the learned deputy, that the sentence imposed by the judge is manifestly inadequate in the circumstances of the case. As pointed out by the learned deputy, the judge did not take into account the serious nature of the offence. Neither did he F address his mind to the public interest. Further, he did not say why he thought a fine more appropriate when the statute provided imprisonment as the first choice. Indeed, the learned judge gave no reasons whatsoever for imposing the sentence he did. There is, therefore, merit in the argument advanced on behalf of the Public Prosecutor that the judge erred in G principle. Hence, we are satisfied that this case demands appellate interference in the matter of sentence.

In our judgment, the imposition of a fine on the appellant, having regard to all the circumstances of the case, is a mere tap on the wrist because it plainly lacks any deterrent effect. Taking into account all the circumstances of the case, including the seriousness of the offence and the H requirement of deterrence, and after striking a balance between the interests of the public and the interests of the appellant, we came to the conclusion that a term of 18 months' imprisonment would be the appropriate sentence to be passed upon the appellant. We sentenced the appellant accordingly upon the first charge.

I

(c) The second charge

We now turn to deal with the appropriateness of the punishment meted out by the judge in respect of the second charge.

In *PP v Mark Koding*, Mohd Azmi J (as he then was) described sedition as a serious offence. We agree. In the present instance, the appellant had expressed his views upon the matter in Parliament and had asked the questions about it. If he was dissatisfied with the replies he received on the floor of the House, there were courses open to him as a member of the Dewan Rakyat acting within the bounds of law. Instead of pursuing his parliamentary remedies, he set himself upon a course that was plainly unlawful. He acted with purpose and after due deliberation at the meeting held in December 1994. He had in his possession the true facts of the case concerning the minor. Yet he portrayed to those present at the meeting of 19 January 1995 a picture materially at variance with the truth. In the light of all the evidence available on record, we are unable to accede to En Karpal Singh's suggestion that the appellant was merely discharging his public duty as a Member of Parliament when he uttered the offending words.

On the evidence adduced, it is clear that the words uttered by the appellant at the meeting of 19 January 1995 were seditious. The appellant has not sought to argue otherwise. The learned deputy argued that it is a serious thing to launch an unwarranted attack upon the judiciary. With this submission we are in agreement.

It is of vital importance that the public enjoys confidence in the administration of justice of which the courts form an integral part. Speeches or publications that bring the administration of justice into hatred or contempt produce a serious consequence. For, they have the effect of destroying public confidence in one of the pillars of the democratic system of government. It is in recognition of this harm that Parliament enacted s 3(1)(c) of the Sedition Act 1948.

The seriousness with which the law treats allegations of partiality and bias on the part of those entrusted with the administration of justice is well illustrated by *Re Sarbadhicary* (1906) 95 LT 894 where an article published by a barrister that included the following passage:

> So our readers can easily see that we have a wonderful Chief Justice who punishes an assailed and not an assailant with miraculous readiness and activity. He punishes not the wrongdoers, but the wronged and thus he upholds justice.

was held by the Privy Council to be a contempt of court. Sir Andrew Scoble who delivered the advice of the Board observed (at p 895 of the report) that:

> [I]t is essential to the proper administration of justice that unwarranted attacks should not be made with impunity upon judges in their public capacity ... .

We pause for a moment to observe the similarity in the language used by the advocate in the above-quoted case and that employed by the appellant in the present instance.

We are not for a moment saying that no criticism of a court is ever possible. It is not judicial policy to muzzle criticism of judges or their judgments, and we would, in this context merely echo what was said in

Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors [1995] 2 MLJ 213 at p 222:

> Criticism of a judge is part of the territory in which he operates. So long as that criticism is made bona fide, based on fact and in conformity with law, none, least of all a judge, should mind: for there is no acquisition of knowledge without criticism. Over-sensitivity to criticism may result in ignorance, or much worse, intellectual arrogance. To decide a point in fear of criticism is to abdicate duty. These are matters that form part of a well-recognized judicial philosophy and should require no reiteration.

It is only when criticism exceeds its legitimate bounds and becomes proscribed conduct that the courts will intervene. Whether particular conduct falls within the parameters of permissible criticism or has crossed the line to become criminal conduct depends upon the facts of each case.

To return to the case before us, we find merit in the criticism by En Azahar of the learned judge's approach to the question of sentence passed upon the appellant in respect of the second charge. It would appear that the learned judge did not sufficiently appreciate the seriousness of the offence committed by the appellant. The fine of RM5,000, in default three months' imprisonment imposed by the learned judge is in our view, for the reasons already given, grossly inadequate. It follows that the appellant's appeal against sentence must fail.

True, that s 4 of the Sedition Act 1948 provides for a fine in priority to a term of imprisonment as punishment. But that is not to say that a court ought never to send a person to prison for sedition. It all depends on the facts of each case. Having regard to the facts of this case, we came to the conclusion that the sentence imposed by the judge must be set aside in favour of a term of imprisonment of 18 months from 1 April 1998.

Conclusion

In the result, the appellant's appeals against conviction and sentence were dismissed. The cross-appeals of the respondent were allowed. The appellant was sentenced to 18 months' imprisonment on each charge. Taking into account all the circumstances of the case, in particular the fact that the subject matter of the first and second charges are closely connected and form part and parcel of the same transaction, we came to the conclusion that the sentences of imprisonment should run concurrently and we so ordered. On the application of counsel for the appellant, opposed by the learned deputy, the appellant was granted bail pending appeal to the Federal Court.

Before concluding, we wish to record our appreciation to counsel on both sides of the Bar. Encik Karpal Singh, as well as En Azahar and En Yusof argued these appeals with their usual ability. Their research and presentation of their respective cases made light the burden placed upon us in our deliberations of this case.

Appellant's appeals dismissed. Respondent's cross-appeals allowed.

Reported by David Lai